

11. With respect to the application process, appropriate accommodations may include the following: (1) Providing information regarding job vacancies in a form accessible to the vision or hearing impaired, e.g., by making an announcement available in braille, in large print, or on audio tape, or by responding to job inquiries via TDDs; (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; and (3) appropriately adjusting or modifying employment-related examinations, e.g., extending regular time deadlines, allowing a blind person or one with a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant to demonstrate his or her skills through alternative techniques and utilization of adapted tools, aids and devices.

Appendix C To Part 60-741—Invitation to Self-Identify

1. This employer is a Government contractor subject to section 503 of the Rehabilitation Act of 1973, as amended, which requires Government contractors, in employing persons to carry out the contract, to take affirmative action to employ and advance in employment qualified individuals with disabilities. If you have a disability and would like to be considered under the affirmative action program, please tell us. This information will assist us in placing you in an appropriate position and in making accommodations for your disability. [The contractor should insert here a brief provision summarizing the relevant portion of its affirmative action program.] Submission of this information is voluntary and refusal to

provide it will not subject you to any adverse treatment. Information you submit about your disability will be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of individuals with disabilities, and regarding necessary accommodations; (ii) first aid and safety personnel may be informed, when and to the extent appropriate, if the condition might require emergency treatment; and (iii) Government officials who are engaging in law enforcement activities, including officials investigating compliance with the act shall be informed. The information provided will be used only in accordance with section 503 of the Rehabilitation Act, as amended and its implementing regulations.

2. If you are an individual with a disability, we would like to include you under the affirmative action program. It would assist us if you tell us about (1) any special methods, skills, and procedures which qualify you for positions that you might not otherwise be able to do because of your disability so that you will be considered for any positions of that kind, and (2) the accommodations which we could make which would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, elimination of certain duties relating to the job, provision of personal assistance services or other accommodations.

Appendix D To Part 60-741—Review of Personnel Processes

The following is a set of procedures which contractors may use to meet the requirements of § 60-741.44(b):

1. The application or personnel form of each known applicant with a disability should be annotated to identify each vacancy for which the applicant was considered, and the form should be quickly retrievable for review by the Department of Labor and the contractor's personnel officials for use in investigations and internal compliance activities.

2. The personnel or application records of each known individual with a disability should include (i) the identification of each promotion for which the employee with a disability was considered, and (ii) the identification of each training program for which the individual with a disability was considered.

3. In each case where an employee or applicant with a disability is rejected for employment, promotion, or training, a statement of the reason should be appended to the personnel file or application form as well as a description of the accommodations considered. This statement should be available to the applicant or employee concerned upon request.

4. Where applicants or employees are selected for hire, promotion, or training and the contractor undertakes any accommodation which makes it possible for him or her to place an individual with a disability on the job, the application form or personnel record should contain a description of that accommodation.

[FR Doc. 92-25172 Filed 10-20-92; 8:45 am]

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October 21, 1992

Wednesday
October 21, 1992

Part III

**Department of
Commerce**

Economic Development Administration

**Economic Development Assistance
Programs Under the Dire Emergency
Supplemental Appropriations Act, Fiscal
Year 1992; Availability of Funds; Notice**

DEPARTMENT OF COMMERCE**Economic Development
Administration**

[Docket No. 921064-2264]

**Economic Development Assistance
Programs Under the Dire Emergency
Supplemental Appropriations Act, FY
1992; Availability of Funds****AGENCY:** Economic Development
Administration, Commerce.**ACTION:** Supplementary notice.

SUMMARY: The Economic Development Administration (EDA) announces the policies and the application procedures for economic adjustment assistance as authorized by Public Law 102-368, section 101, chapter II, September 23, 1992. These funds are designed to assist substantially and seriously affected States and local communities to facilitate their orderly recovery from the consequences of Hurricane Andrew, Hurricane Iniki, Typhoon Omar, the severe storms that caused damage to electrical cooperatives in the State of Kansas on June 15, 1992, and July 7 and 8, 1992, and other disasters.

FOR FURTHER INFORMATION CONTACT: The appropriate EDA Regional Office/Field Office or the Director, Economic Adjustment Division, Economic Development Administration, room 7327, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482-2659.

SUPPLEMENTARY INFORMATION:**Funding Availability**

Funds in the amount of \$70.0 million are available for this disaster recovery program and shall remain available until expended.

Funding Instrument

Funds will be awarded through grants under the Sudden and Severe Economic Dislocation (SSED) program under title IX of the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89-136; 42 U.S.C. 3121 et seq.) (PWEDA). Application procedures, competitive selection criteria and post approval project implementation information for the SSED program are applicable to the award of disaster adjustment assistance and are described in the Federal Register of February 4, 1992 (57 FR 4294), that announces EDA's FY 1992 Notice of Availability of Funds,

or such subsequent annual Notices of the Availability of Funds. EDA will respond with direct technical support of the recovery by assisting local and state officials with the assessment of the economic injury caused by the disaster and the development of an economic recovery plan.

Implementation projects must be consistent with and preferably an outgrowth of the recovery plan.

Eligible Applicants

Eligible applicants include those states and local communities identified in the Presidential declarations of major disaster; for Florida and Louisiana resulting from Hurricane Andrew, Hawaii, resulting from Hurricane Iniki, Guam, resulting from Typhoon Omar, and other disaster areas cited as part of Public Law 102-368. Eligible applicants may include a redevelopment area or economic development district established under title IV of PWEDA; an Indian tribe, a state or a city or other political subdivision of a state, or a consortium of such political subdivisions; a Community Development Corporation defined in the Community Economic Development Act, 42 U.S.C. 9802; and a nonprofit organization determined by EDA to be the representative of a redevelopment area.

All nonprofit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Special Application Procedures

As described in EDA's Federal Register Notice of Availability of Funds, proposals will be evaluated by EDA based on conformance with statutory and regulatory requirements, the economic adjustment needs of the area, the merits of the proposed project in addressing those needs and the potential applicants' ability to manage the grant effectively. In the case of a Presidentially declared natural disaster, the customary area eligibility job loss threshold criteria is waived.

Proposal Submission Procedures

Proposals for economic adjustment assistance authorized under section 101,

of Public Law 102-368 will be submitted to EDA. Interested parties should contact the appropriate Economic Development Representative for the area or the appropriate EDA Field Office/Regional Office for a proposal package.

Locations of EDA Disaster Area Offices*Hurricane Andrew***Florida Field Office**

Address: EDA Disaster Field Office, 36th Street & Lejeune Building 11, room 3139, Miami, Florida 33159-4022

Mailing Address: P.O. Box 4022, Miami Florida 33159-4022

Telephone Number: (305) 526-4725

Contact: Boyd B. Rose

Louisiana**Economic Development Representative:**

Pamela Davidson

Address: Room 104, 412 North Fourth Street, Baton Rouge, Louisiana 70802-5523

Telephone Number: (504) 389-0227

*Hurricane Iniki and Typhoon Omar***Hawaii and Guam****Economic Development Representative:**

Frank McChesney

Address: P.O. Box 50264, Federal Building, room 4106, Honolulu, Hawaii 96850

Telephone Number: (808) 541-3391

*Storms in the State of Kansas***Kansas****Economic Development Representative:**

John Zender

Address: Room 632, 1244 Speer Boulevard, Denver, Colorado 80204

Telephone: (303) 844-4902

Formal Application Procedures

Upon obtaining EDA Headquarters concurrence, the eligible applicant will be invited to submit a formal grant application for economic adjustment assistance. The formal application will include an ED-540, as approved by the Office of Management and Budget Control No. 0610-0058.

Dated: October 15, 1992.

Douglas J. Aller,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 92-25513 Filed 10-20-92; 8:45 am]

BILLING CODE 3510-24-M

Wednesday
October 21, 1992

Part IV

**Securities and
Exchange
Commission**

17 CFR Parts 228, 229, 240 and 249
Executive Compensation Disclosure; Final
Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240 and 249

[Release No. 33-6962; 34-31327; IC-19032]

RIN 3235-AF34

Executive Compensation Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission has adopted amendments to the executive officer and director compensation disclosure requirements applicable to proxy and information statements, registration statements and periodic reports under the Securities Exchange Act of 1934, and to registration statements under the Securities Act of 1933. These amendments are intended to make compensation disclosure clearer and more concise, and more useful to shareholders.

EFFECTIVE DATE: These rules are effective October 21, 1992.

Transition Provisions: The new rules are effective October 21, 1992, and any registrant may use the new rules at any time thereafter.

To facilitate a smooth transition to use of the new rules, however, the following transition provisions will be allowed by the Commission. Registrants other than small business issuers are required to comply with the new rules for:

(1) Any new registration statement under the Securities Act, and any new registration statement or periodic report under the Exchange Act, filed on or after January 1, 1993; and

(2) Any new proxy or information statement filed on or after January 1, 1993, except that proxy or information statements filed with respect to the annual election of directors by registrants whose current fiscal year ends on or after December 15, 1992, are required to comply with the new provisions whenever filed.

Small business issuers are required to comply with the new rules for any new registration statement under the Securities Act, any new registration statement or periodic report under the Exchange Act, and any new proxy or information statement filed on or after May 1, 1993.

FOR FURTHER INFORMATION CONTACT: Catherine T. Dixon at (202) 272-2589, Gregg W. Corso at (202) 272-3097, or Richard P. Konrath or Barbara C. Jacobs at (202) 272-2589, Division of Corporation Finance, Securities and

Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission has adopted amendments to Items 402,¹ 403² and 601³ of Regulation S-K, as well as Items 8 and 10 of Schedule 14A,⁴ Items 11 and 14 of Form 10-K,⁵ and corresponding changes to Items 402,⁶ 403⁷ and 601⁸ of Regulation S-B, and Item 13 of Form 10-KSB.⁹ These amendments modify the disclosure of executive officer and director compensation in proxy and information statements, registration statements and periodic reports under the Securities Exchange Act of 1934 ("Exchange Act"),¹⁰ and registration statements under the Securities Act of 1933 ("Securities Act").¹¹

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¹ 17 CFR 229.402.

² 17 CFR 229.403.

³ 17 CFR 229.601.

⁴ 17 CFR 240.14a-101, Items 8 and 10.

⁵ 17 CFR 249.310, Items 11 and 14.

⁶ 17 CFR 228.402.

⁷ 17 CFR 228.403.

⁸ 17 CFR 228.601.

⁹ 17 CFR 249.310B, Item 13.

¹⁰ 15 U.S.C. 78a et seq.

¹¹ 15 U.S.C. 77a et seq.

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I. Executive Summary

To improve shareholders' understanding of all forms of compensation paid to senior executives and directors, the criteria used by the board of directors in reaching compensation decisions, and the degree of relationship between compensation and corporate performance, the Commission earlier this year published for comment substantial revisions to its rules governing disclosure of executive compensation in proxy and information statements and other Commission filings.¹² Designed to furnish shareholders with a more understandable presentation of the nature and extent of executive compensation, the proposals sought to consolidate the requisite disclosure in a series of tables setting forth each compensatory element for a particular fiscal year. The proposed new disclosure system relied on several specific new elements, as well as reformatting of existing required disclosures for greater clarity.

First, all compensation paid to specified senior executives over the past three years was to be set forth in a new

¹² Securities Act Release No. 6940 (June 23, 1992) [57 FR 29582], as modified, Securities Act Release No. 6941 (July 10, 1992) [57 FR 31156]. The comment letters may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. File No. S7-16-92.

"Summary Compensation Table." This table would show both annual and long-term compensation in a single, comprehensive overview. Second, the Compensation Committee of the board of directors would be required to report on the corporate performance factors that it relied on in making specific compensation awards for reporting executives, as well as describe the general policies of the committee in determining senior executive compensation. Third, the cumulative total return to shareholders of the registrant over a period of at least the previous five years would be required to be set forth in a line graph, together with the comparable return to shareholders for the stocks included in (i) the Standard and Poor's 500 Composite Stock Price Index ("S&P 500"); and (ii) any recognized industry index (e.g., the Dow Jones Transportation Average) or a group of peer companies selected by the registrant.

Public response to the Commission's requests for comment on the proposed revisions was substantial. The Commission has received more than 900 letters of comment addressing the proposals. Commenters include approximately 555 individual and institutional shareholders, 245 registrants and registrant organizations, and a combined total of over 100 members of the executive compensation consultant, accounting, legal and academic communities. The comment letters reflect a general consensus that reform of the current executive pay disclosure system is appropriate and necessary.

Many of the commenters offered recommendations or suggestions for refinement of the original proposals to accomplish more effectively the goal of assuring that all material facts regarding executive compensation are clearly and fully disclosed. Other commenters suggested methods for reducing the cost or burden of collecting the necessary information, as well as for limiting the applicability of the new requirements to certain types of registrants. Still other commenters expressed strong concerns with respect to potential litigation arising from the new disclosure elements. A number of changes have been made in response to these comments.

As under the proposals, the Summary Compensation Table will cover senior executive compensation in each of the registrant's last three fiscal years, followed by tables containing more specific data on the components of compensation for the last completed fiscal year. However, in response to

public comment, the disclosure as to "all executive officers as a group" has been deleted. The former requirement to provide individualized disclosure as to the five highest paid executive officers has been modified. Under the new Summary Compensation Table (and all other tables), the covered individuals will be the Chief Executive Officer ("CEO") (regardless of pay level), and the four most highly compensated executive officers in addition to the CEO. Except for the CEO, disclosure is limited to those executives with salary and bonus of over \$100,000 (an increase from the former \$60,000 threshold) for the last completed fiscal year.

The Board Compensation Committee Report has been retained, but revised to limit the description of performance factors on which the Committee specifically relied to the compensation of the CEO alone, together with a discussion of the Committee's general policies with respect to executive officer compensation. This will avoid possibly repetitive descriptions as to each of the named executive officers. In addition, language in the proposal that was read by some as suggesting the need to disclose discussions of subjective personal factors relating to an executive's performance (e.g., traits of judgment, personality, etc.) has been revised to make it clear that the mandated disclosure is solely with respect to corporate performance criteria (e.g., profitability, sales growth, return on equity, market share) on which the Committee relied in reaching its decision concerning CEO compensation. Finally, this report will be given the same legal status as the annual report to security holders required pursuant to the proxy rules and, as such, will not be deemed to constitute soliciting material or to be filed for purposes of section 18 of the Exchange Act.¹⁵ In the Commission's view, the "remedy" for any shareholder who is not satisfied with the Committee's report should be to vote against re-election of committee members as directors, not to litigate claims in the courts.

In addition to the Summary Compensation Table, the rules as proposed included several tables providing more detailed information concerning grants, exercises and value of outstanding stock options, long-term incentive plans and other information. As adopted, the rules eliminate certain of the proposed detailed tables or portions thereof, and combine others into single tables. These revisions are designed to eliminate redundant

information and to improve the clarity of information presented. Hypothetical rates of stock price appreciation to be used in presenting potential realizable values of stock options and SARs have been reduced. As an alternative to use of hypothetical values, presentation of grant-date option (or SAR) values calculated through use of a recognized valuation formula, such as the "Black-Scholes" option pricing model, will be permitted. Registrants also are permitted to add additional hypothetical situations, such as a zero return to shareholders, as well as other information not required by the rules.

The Performance Graph has been revised slightly. Instead of mandating comparison of the registrant's cumulative total shareholder return in all cases to the return on the S&P 500, the rule will allow issuers whose stock is not included in the S&P 500 to select any broad market index that does include their stock or the stock of companies that trade in the same national securities exchange or The National Association of Securities Dealers Automated Quotations System ("NASDAQ") market, or are of comparable market capitalization. A comparison of the registrant's return also must be made to the return on either a published industry index or a registrant-determined peer index. In addition, in view of the purpose of this graph as a general depiction of one measure of corporate performance to be used by shareholders in evaluating the quality of decisions made by directors standing for re-election, the Performance Graph will be given the same legal status as described above for the Board Compensation Committee Report. This also is intended to insure that issuers will not be subjected to litigation concerning their selection of a peer company or industry index for inclusion in the Performance Graph, since no single other company or industry index will be perfectly comparable to a given issuer.

The final rules also provide that the Board Compensation Committee Report and the Performance Graph are required to be included only in proxy and information statements relating to the annual election of directors; they need not be included in or incorporated by reference into any of the registrant's filings under the Exchange Act or Securities Act. Like those items, the Report on Option/SAR Repricing also is required only in annual election proxy and information statements. The proposed disclosure of additional information regarding the relationships between compensation committee

¹⁵ 15 U.S.C. 78r.

members and the registrant or other entities ("Compensation Committee Interlocks and Insider Participation") has been substantially revised, as discussed below.

Small business issuers eligible to report and register securities under the recently adopted small business disclosure system¹⁴ will not be required to include many of the required new disclosures, including the Board Compensation Committee Report and the Performance Graph. In addition, small business issuers will be exempt from portions of other disclosure requirements and will have the option under the Transition Provisions of using the version of the rules in effect prior to the effective date for all filings before May 1, 1993.

Investment companies registered under the Investment Company Act of 1940 ("Investment Company Act")¹⁵ will be subject only to the provisions of revised Item 402(g) with respect to disclosure of compensation of directors and the compensation disclosure requirements included in the forms on which they register as investment companies. In addition, the rules adopted today do not affect compensation disclosure by foreign issuers.

II. Revised Item 402 of Regulation S-K

A. General

1. Treatment of Specific Types of Issuers

a. *Small Business Issuers.* Both in its proposals to revise executive compensation disclosure requirements and its recent adoption of the new integrated small business disclosure system,¹⁶ the Commission sought comment on the extent to which small businesses should be subject to the new provisions governing disclosure of executive compensation, particularly the requirements to provide the Board Compensation Committee Report, the Performance Graph, and the Compensation Committee Interlocks and Insider Participation disclosure. Representatives of small and high technology ("hi-tech") companies argued that exceptions should be made for such companies, based on the relative costs of compliance, the typical structures of their boards, and the significantly different compensation practices among start-up, developing and hi-tech companies. While a few commenters

took issue with such an exclusion, arguing that shareholders' need for the full panoply of executive pay disclosure was no less in the case of smaller companies, there was significant commenter support, from shareholders and others, for special provisions tailored to smaller issuers.

Under the rules adopted today, small business issuers eligible to use the small business integrated disclosure system¹⁷ will be required to provide only the Summary Compensation Table, the option and SAR grant and exercise tables (omitting the option valuation information), the long-term incentive plan awards table, and disclosure concerning option or SAR repricing (omitting the 10-year repricing history), named executive officer employment contracts and termination/severance arrangements, and director compensation.¹⁸ Any small business issuer that elects not to use the small business forms and schedules nonetheless may provide this more streamlined compensation disclosure.¹⁹ In addition, as a transition matter, small business issuers are eligible to file under the rules in effect prior to the effective date until May 1, 1993.

b. *Registered Investment Companies.* Investment companies registered under the Investment Company Act have been excluded from the executive compensation and registrant performance disclosure requirements of revised Item 402, because the management functions of most such companies are performed by external managers. Instead, registered investment companies will comply with disclosure requirements prescribed by applicable Investment Company Act registration statements. Compensation of investment company directors, however, will continue to be disclosed in accordance with revised Item 402(g).²⁰

c. *Foreign Private Issuers.* No change has been made to the existing disclosure obligations with respect to executive and director compensation of foreign private issuers using Form 20-F.²¹ Language has been added to Item 402 clarifying that a foreign private issuer may satisfy the requirements by reporting the information required by Items 11 and 12 of Form 20-F, even if

filing reports on forms for domestic issuers.²²

2. Transition Provisions

The new rules are effective immediately upon publication in the *Federal Register*. Any registrant may use the new rules at any time thereafter. To facilitate a smooth transition to use of the new rules, however, the following transition provisions will be allowed by the Commission. Registrants other than small business issuers are required to comply with the new rules for:

(1) Any new registration statement under the Securities Act, and any new registration statement or periodic report under the Exchange Act, filed on or after January 1, 1993; and

(2) Any new proxy or information statement filed on or after January 1, 1993, except that proxy or information statements filed with respect to the annual election of directors by registrants whose current fiscal year ends on or after December 15, 1992, are required to comply with the new provisions whenever filed.

Small business issuers are required to comply with the new rules for any new registration statement under the Securities Act, any new registration statement or periodic report under the Exchange Act, and any new proxy or information statement filed on or after May 1, 1993.

There are specific transition provisions with respect to certain items in the Summary Compensation Table, Board Compensation Committee Report, Compensation Committee Interlocks and Insider Participation disclosure, and Report on Option/SAR Repricing, as discussed below.

3. Application to Specific Types of Filings

Item 402 has been restructured to specify those disclosure provisions that are required in all filings calling for Item 402 compensation information, and those provisions applicable only to a proxy or information statement relating to an annual meeting of security holders (or special meeting or written consents in lieu of such meeting) at which directors are to be elected. The provisions applicable only to such proxy or information statements are the Board Compensation Committee Report, the Performance Graph, and the Report on Option/SAR Repricing. These items will not be required to be included directly in any other filing, or incorporated by reference into any Securities Act or Exchange Act filing.²³

¹⁴ Regulation S-B [17 CFR 228.10 *et seq.*]; see Securities Act Rule 405 and Exchange Act Rule 12b-2 [17 CFR 230.405; 17 CFR 240.12b-2].

¹⁵ 15 U.S.C. 80a-1 *et seq.*

¹⁶ Securities Act Release No. 6949 [July 30, 1992] [57 FR 36442].

¹⁷ See Item 10(a)(1) of Regulation S-B [17 CFR 228.10(a)(1)].

¹⁸ Item 402 of Regulation S-B has been revised accordingly.

¹⁹ Item 402(a)(1)(i) of Regulation S-K.

²⁰ Item 8 of Schedule 14A [17 CFR 240.14a-101, Item 8], as amended.

²¹ 17 CFR 249.220f.

²² Item 402(a)(1)(ii) of Regulation S-K.

²³ Item 402(a)(8) of Regulation S-K.

4. General Provisions of Revised Item 402

Several new general provisions have been added to amended Item 402 in light of the comments received. First, the revised item includes an express statement that it requires disclosure of all compensation to the named executive officers and directors for services rendered in all capacities to the registrant and its subsidiaries.²⁴ Just as under former Item 402(a)(1), the source of the compensation has no bearing on the application of new Item 402.²⁵ As under the former requirements, however, the item states that registrants need not provide disclosure of any transaction between the registrant and a third party that is reported in response to the relationships disclosure requirements of Item 404 of Regulation S-K.²⁶ Further, registrants are expressly permitted to exclude any table, or any column otherwise prescribed by a given table, absent a compensatory item required to be reported in such table or column in any of the covered fiscal years.²⁷

In response to comment, and to streamline further the requisite disclosure, the proposed categorization of compensatory instruments has been revised. Options and freestanding SARs, whether exercisable in cash or stock, will receive the same treatment under the revised Item.²⁸ Awards under restricted stock plans that are subject to performance-based conditions to vesting, in addition to the lapse of time and/or continued employment, will be permitted to be reported as long-term incentive plan items.

²⁴ Item 402(a)(2) of Regulation S-K. Except as specified in Item 402(a)(5) with respect to third-party transactions disclosed under Item 404 of Regulation S-K (17 CFR 229.404), all plan and non-plan compensation must be reported pursuant to Item 402, even if also called for by another disclosure requirement. No item need be reported for a fiscal year if already reported for a prior fiscal year. *Id.* The item specifies that, for purposes of Item 402, the term "plan" does not include non-discriminatory medical, group life insurance or relocation plans available generally to all salaried employees. Item 402(a)(7)(ii) of Regulation S-K (combining the definition of "plan" in Instruction 3 to former Item 402(b) with the exclusion for specified non-discriminatory plans in former Item 402(b)(1)).

²⁵ See former Item 402(a)(1) of Regulation S-K; Securities Act Release No. 6003 (Dec. 4, 1978) [43 FR 58151]. Revised Item 402(a)(2) of Regulation S-K is a combination of the provisions governing disclosure in the cash compensation table (former Item 402(a)(1) of Regulation S-K) and the instruction mandating inclusion in Item 402 of transactions of the registrant with third parties where the primary purpose is to furnish compensation to any covered executive officer (General Instruction 2 to former Item 402 of Regulation S-K).

²⁶ Item 402(a)(5) of Regulation S-K.

²⁷ Item 402(a)(6) of Regulation S-K.

²⁸ Items 402(a)(7)(i), 402(b)(2)(iv)(B), 402(c) and 402(d) of Regulation S-K.

5. Designation of Named Executive Officers and Elimination of Executive Officer Group

There was wide support from all categories of commenters to require individualized disclosure of CEO compensation, regardless of pay level, and to raise the threshold for individualized disclosure regarding other executives from \$60,000 to \$100,000. Similarly broad commenter support was expressed for elimination of the executive officer group information. Several commenters suggested that the number of executive officers subject to individual disclosure could be reduced without loss of material information to shareholders, and with the concomitant benefit of streamlining the information required. At the same time, others suggested that the Commission expand disclosure beyond the five named executives originally proposed to elicit individualized information as to all executive officers serving on the registrant's board, or even as to all directors, whether or not employed by the registrant in any other capacity. Some commenters objected to basing the selection of the highest paid executives on the sum of amounts contained in all three of the annual compensation columns in the Summary Compensation Table, because of the potentially wide variety of non-comparable compensation that could be reported in the third, or "Other Annual Compensation," column.

The requirement to disclose information for the executive group has been eliminated, and the provisions governing designation of the persons subject to individualized disclosure as "named executive officers" revised in light of these comments.²⁹ As was proposed, the named executive officers will consist of the CEO plus the other four most highly compensated executive officers. Status and compensation levels in the last completed fiscal year will determine the identity of the named executive officers for all Item 402 disclosure, both tabular and narrative. In determining the officers covered, status at the end of the last completed fiscal year governs. Individualized disclosure of the CEO's compensation will be required under amended Item 402, regardless of pay level. On the other hand, individualized disclosure with respect to the other four most highly compensated executives will not be required with respect to anyone with compensation of \$100,000 or less in the

²⁹ Item 402(a)(3) of Regulation S-K, and Instruction 1 thereto.

last completed fiscal year. In a change from the proposal, determination of the most highly compensated executives will be based on the total of the amounts required to be shown in the Salary and Bonus columns of the Summary Compensation Table for the last completed fiscal year.

Instruction 2(C) of former Item 402(a) of Regulation S-K regarding bonus and overseas assignments has been retained in the new item.³⁰ The item as adopted also includes an instruction to remind registrants that any officer of a subsidiary with policymaking functions may be an executive officer of the registrant who may be subject to individualized pay disclosure.³¹

B. Summary Compensation Table

The Summary Compensation Table³² was praised by shareholder commenters as the linchpin of the Commission's revised executive compensation disclosure scheme. This tabular, three-year summary will provide shareholders with a comprehensive overview of the registrant's executive pay practices. Through this more objective, formatted presentation of compensation information, which in the past often has been furnished in widely dispersed and disjointed narrative, shareholders will be able to understand clearly compensation for the last completed fiscal year, to identify trends in the registrant's compensation of its top managers, and to compare such trends with those disclosed by other registrants.

As widely recognized and endorsed by shareholder commenters, the Summary Compensation Table is intended to provide an easily understood overview of executive compensation in a single location within the proxy or information statement. Suggestions from a number of commenters to split the Summary

³⁰ Instruction 3 to Item 402(a)(3) of Regulation S-K. The language of the instruction has been clarified to reflect expressly that the circumstances in which it applies are limited. This instruction is intended to prevent the literal language of the item from leading to designation of an individual as one of the registrant's most highly compensated executive officers in lieu of another individual, based on a highly unusual situation, such as a one-time extraordinary bonus, or on compensation that has been adjusted to reflect the added costs imposed by overseas assignments. The instruction does not apply where the registrant anticipates that the circumstances will recur or the high compensation of an executive stationed abroad is not attributable to such costs.

³¹ Instruction 2 to Item 402(a)(3) of Regulation S-K, taken from Instruction 2(B) to former Item 402(a) of Regulation S-K. See Rule 3b-7 under the Exchange Act [17 CFR 240.3b-7].

³² Item 402(b) of Regulation S-K.

Compensation Table into multiple tables would have defeated this purpose, and therefore have not been adopted. Similarly, any presentation of the Summary Table that would obscure viewing it as a unitary item of disclosure is not permitted. At the suggestion of some commenters, and as illustrated below, however, registrants will be permitted to include vertical lines of demarcation to distinguish among the columns in the Summary Compensation Table.

Additionally, the table has been streamlined and a number of compensation items redefined in response to comment.

Some commenters suggested that the Commission provide a three-year transition for the Summary Compensation Table because of the difficulty of compiling the data in the form required, particularly with respect to the executive group. In light of the elimination of the executive group information, the Commission does not believe that a three-year phase-in is generally necessary. However, to facilitate adaptation to the revised requirements, registrants will be

permitted a transition period for disclosure of the amounts reported in the "Other Annual Compensation" and "All Other Compensation" columns of the new table. Accordingly, these columns need not include information for fiscal years ended before December 15, 1992. Small business issuers, however, will be permitted to use a three-year phase-in for all columns of the Summary Compensation Table.

Commenters also raised questions about the Item's application to periods when the registrant was not a reporting company. The Item provides that, if the registrant was not a reporting company during the entire three-year period, no information need be provided for any year, other than the most recent completed fiscal year, during which the registrant was not an Exchange Act reporting company.³³

The rules as adopted include the proposed provision that compensation reported in the Summary Compensation Table for a named executive officer includes that person's compensation for the full covered fiscal year, including compensation attributable to the portion of the year in which the executive did

not serve in that capacity.³⁴

Commenters questioned the effect of a change in the CEO or other named executive officers during the three years covered by the Summary Compensation Table. Information is required to be provided for any covered year during which the incumbent served (for any portion of the year) as CEO, but not for prior fiscal years. For the year in which the CEO assumed his or her position, disclosure must be provided of all compensation for the full year for services rendered to the registrant and its subsidiaries, including compensation prior to becoming CEO. With respect to any of the other named executives, disclosure of historic pay is required if such executive was an executive officer of the registrant during the years covered, notwithstanding a change in position. Consistent with treatment of the CEO, if a named executive became an executive officer during one of the reporting years, all compensation during that year should be included.

The Summary Compensation Table is set forth below, followed by an explanation of the nature and scope of compensation elements included.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Annual compensation			Long term compensation			All other compensation (\$)
		Salary (\$)	Bonus (\$)	Other annual compensation (\$)	Awards		Payouts—LTIP payouts (\$)	
					Restricted stock award(s) (\$)	Options/SARs (#)		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
CEO.....	1992							
	1991							
	1990							
A.....	1992							
	1991							
	1990							
B.....	1992							
	1991							
	1990							
C.....	1992							
	1991							
	1990							
D.....	1992							
	1991							
	1990							

1. Annual Compensation—Salary and Bonus Columns

No substantive change has been made to the proposal with respect to the reporting of salary and bonus, with one minor exception discussed below. Under the amended regulation, the dollar value

of base salary and annual bonus, whether denominated in cash, stock or other rights, will be broken out in separate columns of the Summary Compensation Table. Commenters for the most part recognized the legitimate interest of shareholders and other users

of proxy and information statements in the distribution of annual compensation dollars between fixed salary and the generally more performance-sensitive bonus. While several commenters observed that some bonuses are not tied to performance, but instead represent

³³ Instruction to Item 402(b) of Regulation S-K. See sections 13(a) and 15(d) of the Exchange Act [15 U.S.C. 78m(a) and 78o(d)]. If the registrant was a reporting company during part of a fiscal year,

information for the entire fiscal year must be provided, since that information already would have been reported at the time the registrant registered the securities under the Securities Act or

Exchange Act. If information for any prior year was provided in connection with a previous Commission filing, information for that year should be provided in the Summary Compensation Table.

³⁴ Item 402(a)(4) of Regulation S-K.

merely a percentage of salary, this type of information would be disclosable in the Board Compensation Committee Report.

Compensation earned for services performed in a given year, but deferred at the election of the executive officer, will be reported as annual compensation in the column for the type of compensation to which it corresponds (salary or bonus). Registrants may not avoid inclusion of annual cash or non-cash payments in the salary or bonus columns simply by labeling such payments as something other than salary or bonus. Where the amount of bonus or salary earned for services performed in the last completed fiscal year is not calculable in sufficient time to be reported in the proxy or information statement, the instructions specify that the Summary Compensation Table in such proxy or information statement must so note. The Summary Compensation Table in the next year's proxy (or information) statement must include that bonus or salary amount for the fiscal year in which it was earned.³⁵

The Commission has decided to modify the previously proposed treatment of forgone salary or bonus pursuant to registrant programs under which executives receive stock, stock-based instruments or some other form of compensation in lieu of a portion of annual compensation earned.³⁶ Registrants will not be required to report or disclose the amount of salary or bonus forgone in the appropriate column, but must include the dollar value of such forgone amounts in calculating whether a particular executive is among the most highly compensated and whether a particular executive's annual salary and bonus in the aggregate exceed the new \$100,000 threshold for individualized disclosure.³⁷ Awards of non-cash compensation made to an executive in lieu of salary or bonus amounts nevertheless must be disclosed where these awards otherwise are required to be reported in the Summary Compensation Table. For example, options or restricted shares received in a given fiscal year instead of annual cash compensation otherwise payable in that year would be disclosed in the Summary

Compensation Table in the corresponding option or restricted stock grant column. Restricted stock received in lieu of salary or bonus will be included in the aggregate year-end information on restricted stock holdings required to be reported for each named executive officer. Where the grant of a particular form of non-cash compensation does not appear in the Summary Compensation Table, as would be the case with respect to a grant of performance shares or units received in exchange for forgone salary or bonus, a footnote must be added to the salary or bonus column so disclosing and identifying the table where such grant is included.³⁸

2. Other Annual Compensation

All additional forms of annual cash and non-cash compensation paid, awarded or earned, including registrant contributions to retirement plans, were proposed to be reported as "Other Annual Compensation." Both the nature and scope of the information proposed to be reported under this column have been revised substantially in response to comment.

As restructured, the Other Annual Compensation column is required to cover specified other compensation not properly categorized as salary or bonus.³⁹ The items specified are: perquisites; payments to cover an executive's taxes (commonly known as "gross-ups"); earnings paid or payable, but deferred at the election of the named executive officer, on deferred compensation, restricted stock and stock options/SARs at above-market interest rates or through preferential dividend payments; all earnings paid or payable, but deferred at the election of the named executive officer, on long-term incentive plan ("LTIP") compensation;⁴⁰ and preferential discounts on stock purchases.

³⁵ Instruction 3 to Item 402(b)(2)(iii)(A) and (B) of Regulation S-K.

³⁶ Item 402(b)(2)(iii)(C) of Regulation S-K.

³⁷ Earnings on deferred compensation, restricted stock, options/SARs, or long-term incentive compensation accrued but not currently payable (i.e., the named executive officer cannot elect to receive it currently) would be reported in the "All Other Compensation" column of the Summary Compensation Table, as would registrant contributions to defined contribution plans.

Items such as annual expense accruals for contingent awards under long-term incentive plans, yearly appreciation or depreciation in the value of phantom stock or SARs between award and maturation, and annual conditional vesting of deferred shares under a performance share plan, were not intended to be covered by the Summary Compensation Table and need not be reported in this table or pursuant to any other provision of Item 402.

As proposed, the Other Annual Compensation column would have been footnoted to identify its different components. That general provision has been revised to require only disclosure of certain perquisites.

a. *Perquisites.* Several commenters suggested that, to reflect inflation, the perquisites and other personal benefits reporting threshold should be raised from the lesser of \$25,000 or 10% of reported salary and bonus, and that the requirement to itemize each perquisite or benefit in a footnote be eliminated. Given the effect of inflation since the last revision of Item 402 in 1983, which has been taken into account in the Commission's upward adjustment of the dollar benchmark for designating the named executives, the Commission similarly has increased the perks/personal benefits threshold in the final rule to call for disclosure only when the aggregate value of these items exceeds the lesser of either \$50,000 or 10% of total salary and bonus disclosed in the Summary Compensation Table.⁴¹

As proposed, the registrant would have been required to identify each perquisite included in the amount reported in a footnote to the Other Annual Compensation column. The Item has been revised to require footnote or textual narrative disclosure of the nature and value of any particular perquisite or benefit only for those perks valued at more than 25% of the sum of all perquisites reported as Other Annual Compensation for that executive.⁴²

b. *Earnings on deferred compensation, restricted stock, options and SARs.* Commenters took issue with the proposed change to require reporting of all interest on deferred compensation, and all dividends on restricted stock. These commenters objected to characterizing all interest and dividends as compensation, whatever the rates of return. The Commission is persuaded of the merit of the commenters' view that market-rate and non-preferential earnings on deferred compensation, restricted stock, and options/SARs should not be reported as compensation. Accordingly, the Item has been revised to require disclosure only of above-market or preferential earnings paid or payable by the registrant or any of its

⁴¹ The requirement in former Item 402 to disclose the existence of perquisites below the threshold has been deleted as immaterial.

⁴² Instruction 1 to Item 402(b)(2)(iii)(C) of Regulation S-K. As under former Item 402, dollar amounts assigned to perquisites and other personal benefits will continue to be calculated on the basis of aggregate incremental cost to the registrant and its subsidiaries. Instruction 2 to Item 402(b)(2)(iii)(C) of Regulation S-K.

³⁸ Instruction 1 to Item 402(b)(2)(iii)(A) and (B) of Regulation S-K.

³⁹ Some commenters expressed concern that shareholders would assign the dollar value of the amount forgone to the option or other instrument elected.

⁴⁰ Instruction 3 to Item 402(b)(2)(iii)(A) and (B) of Regulation S-K; Instruction 1 to Item 402(a)(3) of Regulation S-K. For purposes of determining whether perquisites need be reported, forgone salary or bonus need not be considered.

subsidiaries.⁴³ Such amounts will be reported as Other Annual Compensation if paid (or payable but deferred at the named executive's election) with respect to the fiscal year and calculable in sufficient time to be reported in the proxy or information statement. If not so paid or payable in the fiscal year, such amounts will be reported under the residual All Other Compensation column.

To avoid the problems cited by various commenters in allowing registrants to exercise judgment as to what constitutes market rate interest, the item now defines the term "market rate."⁴⁴ Interest will be deemed to be above-market, thereby triggering a disclosure obligation, only if the rate of interest is in excess of 120% of the applicable federal long-term rate ("AFR").⁴⁵ In contrast to former Item 402, this determination will be made by reference to the market rate in effect only at the time the interest rate was set.⁴⁶ Under the former item, the measurement was taken both at the time the plan was established and at the time the interest was earned. The change is designed to pick up interest rates intended by the registrant to be compensatory. Only the above-market portion of interest earned in the fiscal year is required to be reported as compensation; that compensation should be reported in the Other Annual Compensation column if paid or payable in that year; otherwise, it should be reported in the All Other Compensation column of the Summary Compensation Table.

The value of dividends (or dividend equivalents) will be reported in the Summary Compensation Table only where the named executive receives

preferential dividends.⁴⁷ Dividends (or dividend equivalents) are preferential only if they are earned at a more favorable rate than dividends on the registrant's common stock. Where dividends (or dividend equivalents) earned are preferential, only the dollar value of the preferential portion thereof is required to be reported as compensation; that compensation should be reported in the Other Annual Compensation column if paid or payable in that year, and otherwise in the All Other Compensation column.

c. *Earnings on LTIP compensation.* In contrast to earnings on deferred compensation, restricted stock and options/SARs, the full amount of all earnings on LTIP compensation must be reported as compensation because such earnings do not represent payments for the registrant's use of the executive's deferred funds. Earnings on LTIP compensation may be reported as part of the amount ultimately realized, unless such amount is paid or payable (but deferred at the election of the named executive officer) prior to payout or maturation. If paid or payable at such earlier time, these earnings would be reported as Other Annual Compensation for the year paid or payable.

d. *Discounted stock purchases.* This column includes discounts on stock of the registrant and its subsidiaries purchased by named executive officers from the registrant or its subsidiaries, unless such discounts are available generally, either to all shareholders or to all salaried employees.⁴⁸ Such discriminatory discounts provide compensation to the executive equal in value to the difference between the purchase price paid by the executive and the fair market value of the stock at the date of purchase.⁴⁹

3. Restricted Stock Awards

No change has been made in the final version of Item 402 with respect to the Summary Compensation Table column for reporting the full market value of aggregate restricted shares awarded in a

given fiscal year to a named executive. Given the minimal risk of forfeiture and the concomitant likelihood of appreciation above the grant-date market value attendant to the vast majority of restricted share awards, which are contingent only upon the passage of time and/or continued employment with the registrant, no discount to market is appropriate to reflect interim constraints on transferability. Deductions for any consideration the executive-recipient has paid for the restricted stock granted, however, may be reflected in the aggregate amount disclosed.⁵⁰

Where a restricted stock plan includes performance-based conditions on vesting, the registrant may elect to treat these items as LTIP compensation.⁵¹ Grants of such items would be reported in the table specifically provided for LTIP awards. If so reported at grant, the value of any of these so-called "performance restricted shares" must be reported in the Summary Compensation Table on payout or maturation.

Under the proposal, registrants would have been required to include in a footnote the vesting schedule for all restricted stock awarded. As adopted, the Item requires footnote disclosure of vesting terms only for those awards that provide for vesting of all or part of the shares awarded in less than three years from the date of grant.⁵² Restrictions on full ownership of restricted shares typically lapse over a period of at least three to five years.⁵³ Therefore, footnote vesting information is required for awards that do not reflect those typical conditions.

Data on the number and value of aggregate restricted shareholdings at the end of the last completed fiscal year have been moved from the proposed Restricted Stock Grant Table to a footnote to the Restricted Stock Award column of the Summary Compensation Table. Except for this information, the Restricted Stock Grant Table was largely redundant of information

⁴³ Earnings on deferred compensation invested in third-party investment vehicles, such as mutual funds, need not be reported.

⁴⁴ Instruction 3 to Item 402(b)(2)(iii)(C) of Regulation S-K.

⁴⁵ A registrant should select the compounding rate in the AFR table that corresponds most closely to the rate set. AFR data are published monthly by the Internal Revenue Service, which requires use of the AFR for a variety of purposes, including determination whether the present value of a future change-in-control payment renders it a "golden parachute" for tax purposes. See Internal Revenue Code Section 1274(d) [26 U.S.C. 1274(d)]; Internal Revenue Code Section 280G(d)(4) [26 U.S.C. 280G(d)(4)].

⁴⁶ In the event of a discretionary reset of the applicable interest rate, the requisite calculation must be made on the basis of the new rate in effect at the time of such reset. Instruction 3 to Item 402(b)(2)(iii)(C) of Regulation S-K.

If applicable interest rates vary depending on conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. *Id.*

⁴⁷ Instruction 4 to Item 402(b)(2)(iii)(C) of Regulation S-K. Where there is no preferential treatment, the Summary Compensation Table simply will include a footnote to the Restricted Stock Award column stating whether dividends are payable on the restricted stock. The same preferential standard governs reporting of accrued dividends and equivalents in the "All Other Compensation" column.

⁴⁸ Item 402(b)(2)(iii)(C)(5) of Regulation S-K. Purchases made through deferral of salary or bonus will receive the same treatment.

⁴⁹ The discount is generally treated as a compensation expense under Generally Accepted Accounting Principles. See Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" (October 1972) ("APB No. 25").

⁵⁰ Item 402(b)(2)(iv)(A) of Regulation S-K. This treatment is consistent with the recognition, for accounting purposes, of full market value at measurement date (grant date if no contingencies) less any amounts paid or to be paid by the executive. See APB No. 25.

⁵¹ Instruction 1 to Item 402(b)(2)(iv) of Regulation S-K. Disclosure of restricted stock awards in the Summary Compensation Table may not be evaded simply by attaching illusory performance conditions to time-lapse restricted shares.

⁵² Instruction 2 to Item 402(b)(2)(iv) of Regulation S-K.

⁵³ See F. Foulkes, *Executive Compensation—A Strategic Guide for the 1990s* 531 (1991); see also *Equity Compensation Trends in America 13* (Share Data 1991) (48% of survey respondents award restricted stock that vests in five or more years).

disclosable elsewhere under amended Item 402 and therefore has been deleted.

4. Option/SAR Grants

Separate option and freestanding SAR columns originally proposed have been combined, at the suggestion of commenters, to streamline presentation of the requisite award information.⁶⁴ As noted above, the total number of options and SARs reported must include cash-only SARs as well as those payable in stock. Rather than adding a separate column for repriced options or SARs to the Summary Compensation Table, as proposed, registrants are required to include options repriced during a covered fiscal year as new grants of options in this column.⁶⁵

5. LTIP Payouts

No change has been made to the reporting of LTIP payouts or maturation,⁶⁶ other than to require the inclusion of the value of any restricted performance shares that vest during a covered fiscal year if not previously reported in the Summary Compensation Table as an award of restricted stock.⁶⁷ Registrants therefore must disclose the dollar value of cash or stock-denominated awards actually realized, or matured but deferred at the election of a named executive officer, in a particular fiscal year.

Under the original proposal, registrants would have been required to disclose all performance-related conditions to payout in a footnote to this column. As adopted, footnote disclosure is required only of the waiver of performance targets or other conditions to realization of an award in connection with a reportable payout.⁶⁸

6. All Other Compensation

Any compensation to a named executive officer that is not reported under any other column of the Summary Compensation Table must be reported under the All Other Compensation column,⁶⁹ other than option and SAR

exercises and LTIP awards.⁶⁰ In contrast to the proposal, the footnote identifying and quantifying compensation reported in this column may be restricted to the last completed fiscal year. Item 402(b) includes a list of specific items that would be reportable in this column. These items, which are not exclusive, are discussed below.

a. *Amounts paid, payable or accrued under termination, severance and change-of-control arrangements.* As proposed, the full value of any golden parachute or other amount paid, payable or accrued⁶¹ in a fiscal year covered by the Summary Compensation Table, in connection with a change-in-control or a named executive's termination or severance, would be reported in this column.⁶²

b. *Earnings on deferred compensation, restricted stock, options and SARs.* As discussed above, earnings on deferred compensation, restricted stock, options and SARs are treated as compensation only when they are above-market, in the case of interest, or preferential, in the case of dividends or dividend equivalents.⁶³ Where such earnings with respect to a covered fiscal year are not reported as Other Annual Compensation, they should be reported in the All Other Compensation column. Thus, the proposed column for accrued dividends on restricted stock has been eliminated.

c. *Earnings on LTIP Compensation.* As noted above, the full amount of earnings on LTIP compensation is treated as compensation. These amounts should be reported in the All Other Compensation column, unless reported in the Other Annual Compensation column.⁶⁴ If the applicable interest rate varies depending on specified conditions (for example, a minimum period of continued service), the reported amount should be calculated assuming all conditions to receiving interest at the highest rate are met.

d. *Registrant contributions to defined contribution plans.* Disclosure is required of the annual contributions or other allocations of the registrant or any of its subsidiaries on behalf of any named executive officer to defined

contribution plans ("DCPs"), whether tax-qualified plans, excess benefit plans, or non-qualified supplemental executive retirement plans, known as "SERPs." In light of commenter concerns that such contributions might be misperceived as currently available to the employee during the reporting period, the location for reporting of these amounts has been changed from the Other Annual Compensation column to the All Other Compensation column.⁶⁵

Responding to questions raised in the proposing release, several commenters advised that the revised Item should require disclosure of the entire amount of a registrant's annual DCP contribution for the year in which made, regardless of whether benefits are vested or unvested at that point. These commenters stated that the timing of vesting should not be controlling because for many of these plans, particularly discriminatory plans, substantial unvested amounts might never be disclosed. This could occur, for example, where contributions are made annually on behalf of an executive to a DCP SERP with a retention, or "golden handcuff," feature under which vesting will not occur until at or after retirement. The Commission agrees with these comments and has amended the rules to cover such contributions.⁶⁶

The requirements of Item 402 have been revised to clarify that defined benefit or actuarial plans are not covered in the Summary Compensation Table.⁶⁷ Information concerning defined benefit or actuarial plans therefore will continue to be reported pursuant to the provisions of Item 402(f) governing pension plan disclosure.

e. *Compensatory split-dollar insurance payments.* Under the proposal, the annual premiums paid by the registrant in the covered fiscal year with respect to split-dollar insurance arrangements relating to the named executive officers would have been required to be reported in the Other Annual Compensation column of the Summary Compensation Table. Commenters objected to this treatment, urging that it overstated the compensatory aspect of these arrangements, because the registrant-paid premiums normally are refunded to the registrant on termination of the policy.

⁶⁴ Item 402(b)(2)(iv)(B) of Regulation S-K.

⁶⁵ Earnings on DCP contributions need not be reported.

⁶⁶ Instruction 2 to Item 402(b)(2)(v) of Regulation S-K.

⁶⁴ Item 402(b)(2)(iv)(B) of Regulation S-K.

⁶⁵ Instruction 3 to Item 402(b)(2)(iv) of Regulation S-K.

⁶⁶ Item 402(b)(2)(iv)(C) of Regulation S-K. For purposes of the LTIP Payout column of the Summary Compensation Table and the LTIP Awards Table discussed below, the term "long-term incentive plan" is defined as any plan providing compensation intended to serve as incentive for performance to occur over more longer than one fiscal year (whether by reference to the registrant's financial performance, stock price, or other measures), other than restricted stock, options and SARs. Item 402(a)(7)(iii) of Regulation S-K.

Instruction 1 to Item 402(b)(2)(iv) of Regulation S-K.

⁶⁷ Instruction 4 to Item 402(b)(2)(iv) of Regulation S-K.

⁶⁸ Item 402(b)(2)(v) of Regulation S-K.

⁶⁰ Instruction 1 to Item 402(b)(2)(v) of Regulation S-K. Those items are reported in other tables.

⁶¹ In contrast to disclosure of termination or severance arrangements and golden parachutes under Item 402(h), this requirement is not subject to a dollar reporting threshold.

⁶² This does not include payouts pursuant to employee benefit plans, whether defined contribution plans or defined benefit or other actuarial plans.

⁶³ Item 402(b)(2)(v)(B) of Regulation S-K. See *supra* Section II.B.2.b.

⁶⁴ Item 402(b)(2)(v)(C) of Regulation S-K.

As adopted, the portion of the premium paid by the registrant in the covered fiscal year pursuant to a split-dollar arrangement that is attributable to term life insurance coverage for the executive officer will continue to be reported in full.⁶⁸ In response to the commenters' concern, however, registrants will be given the option of reporting either: (1) The full dollar value of the remainder of the premiums paid by or on behalf of the registrant during the covered fiscal year; or (2) the current dollar value of the benefit to the executive officer of the remainder of the premium paid by or on behalf of the registrant during the fiscal year. The benefit must be determined for the period, projected on an actuarial basis, between the payment of the premium and its refund at the earliest possible time to the registrant.⁶⁹ In addition,

⁶⁸ The executive is deemed to receive a currently taxable economic benefit to the extent of the employer's payment of the cost of term insurance coverage. IRS Pension Service Table 58; see H. Zaritsky & S. Leimberg, *Tax Planning with Life Insurance* §§ 65.05(1), (2) (1991).

⁶⁹ The same treatment would be accorded loans made to the named executive officers to fund such arrangements.

The same method should be used for each of the named executive officers. If the registrant chooses to change methods from one year to the next, that fact, and the reason therefor, should be disclosed in a footnote to the table.

consistent with the treatment of registrant contributions to defined contributions plans, reporting of split-dollar premiums paid by a registrant (including the term insurance portion) has been moved to the All Other Compensation column.⁷⁰

C. Option/SAR Tables

A number of commenters suggested streamlining the series of Options/SAR tables originally proposed, particularly to consolidate tables and, to the extent consistent with shareholder informational needs, to reduce the amount of detail required. Accordingly, amended Item 402 prescribes two tables—a combined table including individual grant and related potential valuation table, and a combined table including aggregated exercise and year-end holdings value information. The proposed Option/SAR Summary Report that detailed the nature and extent of the registrant's use of options has been deleted, and a new column added to the grant table to reflect the percent of options and SARs granted to all employees in the year represented by each grant to each named executive officer. Much of the information contained in that summary report was

⁷⁰ Item 402(b)(2)(v)(E) of Regulation S-K.

duplicative of information provided for the named executives under revised Item 402, or in the annual report on Form 10-K or the annual report to security holders.⁷¹

1. Individualized Option/SAR Grants in the Last Fiscal Year

The newly combined grant/potential value table requires, for each of the named executive officers, information regarding individual grants of options/SARs made in the last completed fiscal year, and their potential realizable values.⁷² Small business issuers are not required to include the valuation information required under columns (f) and (g).⁷³ This information originally was proposed to be furnished in the tables entitled "Values Based on Assumed Rates of Stock Price Appreciation for Options Granted in Last Fiscal Year" and the "Individual Grants in the Last Fiscal Year." The reconstituted table, as adopted, appears below:

⁷¹ Information concerning the number of outstanding options is reported in the registrant's financial statements. See Accounting Research Bulletin No. 43, Ch. 13B, ¶ 15.

⁷² Item 402(c) of Regulation S-K.

⁷³ Item 402(a)(1)(i) of Regulation S-K.

OPTION/SAR GRANTS IN LAST FISCAL YEAR

Individual Grants					Potential realizable value at assumed annual rates of stock price appreciation for option term		Alternative to (f) and (g): Grant Date Value
Name	Options/SARs granted (#)	Percent of Total options/SARs granted to employees in fiscal year	Exercise or base price (\$/Sh)	Expiration date	5% (\$)	10% (\$)	Grant date present value \$
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
CEO							
A							
B							
C							
D							

a. *Individualized Grant Information.* A broad cross-section of the commenters supported the need for the individualized grant data called for by the table. Required information on individual option grants includes the number of options/SARs granted, the percent of total grants to employees represented by each grant, the per-share exercise or base price, and the expiration date. Repriced options or

SARs must be reported as new grants.⁷⁴ A separate column must be added disclosing the grant-date market price of the registrant's stock if options or SARs are granted at an exercise price below fair market value.⁷⁵

⁷⁴ Instruction 2 to Item 402(c) of Regulation S-K.

⁷⁵ "Market price" may be calculated either by reference to the closing market price per share of the underlying security, or to any other formula for determining market price prescribed for the option or SAR. Instruction 6 to Item 402(c) of Regulation S-K.

A single grant with different exercise or base prices, performance vesting thresholds,⁷⁶ or expiration dates will be reported as separate grants with respect to each tranche with a different exercise or base price, performance threshold or expiration date. Multiple grants in a fiscal year may be aggregated where they have the same exercise or base

⁷⁶ This would be the case with performance options, where the exercise price is set at current market, but vesting is tied to stock price increases.

price and expiration date, and are not subject to disparate performance vesting thresholds.⁷⁷

As under the proposal, the final rules mandate disclosure of performance criteria and other material terms of the option or SAR granted.⁷⁸ Examples include option reload mechanisms, tandem instruments, tax reimbursement, or "gross-up" provisions, and provisions (other than antidilution provisions) structured to adjust the option exercise price. If the exercise or base price of an option or SAR could be lowered at any time during its term (other than through operation of an antidilution provision), the registrant must clearly and fully disclose these provisions and their potential consequences either by footnote or accompanying textual narrative.⁷⁹

b. *Potential Realizable Value Information or Alternative Grant-Date Option/SAR Value.* In the proposing release, the Commission indicated that it had considered requiring option grant-date valuation disclosure in the Summary Compensation Table, but concluded that shareholders might be better served by data reflecting a range of potential realizable values calculated on the basis of various assumed stock price appreciation rates over a period of 10 years. A number of commenters urged the Commission to reconsider its decision not to require option valuation, on the ground that such valuation is recognized as valid and generally relied upon in the market. Other commenters argued against mandating a specific valuation, while a number went further to argue that no value-related information should be required, either because they believed any future stock price appreciation that might be realized on exercise does not represent compensation to the executive-recipient, or any information relating to potential realizable gain would be inherently

speculative and therefore inappropriate.

In light of the significant commenter support for grant-date valuation, Item 402(c) has been revised to allow registrants to report the grant-date option or SAR value. Those registrants that do not opt to disclose grant-date value would instead provide the data called for by the mandated potential option value columns. Repriced options or SARs reported as new grants would be subject to this disclosure.

The potential value columns of the new table have been refined in light of the comments received. Changes to the proposed assumed rates of stock price appreciation were made in response to comments that the appreciation rate should be specified at an annual rate to accommodate different option periods, and that the highest rate proposed, 200%, was unrealistic for many companies.

In response to these concerns, the rule provides for assumed annual appreciation rates and use of the actual option or SAR term. In determining the potential appreciation applicable to a given option or SAR, the registrant will apply the annual appreciation rate compounded annually for the full term of the option or SAR. Registrants will report potential option or SAR gain values based on assumed annualized rates of stock price appreciation of 5% and 10% over the term of the option or SAR granted, with appreciation to be determined as of the expiration date of the option or SAR.⁸⁰ Assuming a 10-year term and annual compounding, this would result in total potential appreciation of 63% and 159%, respectively.

Where the registrant chooses to use the grant-date valuation alternative, the valuation should be footnoted to describe the valuation method used. Where the registrant has used a variation of the Black-Scholes option

pricing model, the description may be limited to a simple indication of the use of such pricing model. In the event another valuation method were to be used, the registrant would be required to describe the methodology as well as any material assumptions.

For awards of discount options or SARs with an exercise or base price below the market price of the underlying stock, a new 0% column must be added. In a change from the proposal, the final rules permit, but do not require registrants that have established minimum stock price appreciation levels, sometimes referred to as "hurdles," or any other performance-related conditions to vesting, to insert additional columns to demonstrate the effect of the premium strike price. Registrants also would be free to add columns reflecting either zero appreciation, where assuming the exercise or base price is at or above the market price on the date of grant, and historical appreciation,⁸¹ respectively, information that a number of commenters suggested would be useful. With respect to indexed options, registrants that wish to reduce the potential realizable gain to reflect the impact of indexing must disclose the operative assumptions applied, either in a footnote or narrative accompanying the table.⁸²

2. Aggregated Option/SAR Exercises in Last Fiscal Year and Fiscal Year-End Option/SAR Values

To streamline further the information required with respect to options, the proposed Option Exercise Table and Options Held at FY-End Table have been simplified and consolidated into a single table.⁸³ This table, as adopted, is depicted below:

⁷⁷ Instruction 8 to Item 402(c) of Regulation S-K.

⁷⁸ Instruction 4 to Item 402(c) of Regulation S-K.

⁷⁹ Item 402(d) of Regulation S-K.

⁸⁰ For example, the potential realizable values of an option for 1000 shares with an exercise price of \$10, and a five-year term, would be reported as \$2,763 (5%) and \$6,105 (10%).

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR AND FY-END OPTION/SAR VALUES

Name	Shares acquired on exercise (#)	Value realized (\$)	Number of unexercised options/SARs at FY-End (#) exercisable/unexercisable	Value of unexercised in-the-money options/SARs at FY-end (\$) exercisable/unexercisable
(a)	(b)	(c)	(d)	(e)
CEO.....				
A.....				
B.....				
C.....				
D.....				

Unlike the proposal, the rules as adopted permit presentation of option/SAR exercise information on an aggregated basis for each named executive. Many of those commenting on the proposed individualized exercise format did not see the need for separate disclosure of each exercise to assess registrant compensation practices. Information concerning expiration dates and annualized gain have also been eliminated as unnecessary.

Other than substituting the terms "exercisable" and "unexercisable" for the proposed "vested" and "unvested" terminology at commenters' request, the required information with respect to options and freestanding SARs held at fiscal year-end is unchanged from the proposal. Though some commenters questioned the need for this information, others indicated that, in assessing option awards in a given year, the amount and potential value of options held by an executive officer were important items of information.

An instruction states that the value of exercised options and unexercised in-the-money options is calculated by subtracting the exercise or base price from the fair market value of the securities underlying the options or SARs as of the exercise date or the fiscal year-end, respectively.⁸⁴ Thus, the withholding of shares to pay the exercise price or taxes will not affect the calculation.⁸⁵

D. LTIP Awards

As proposed, long-term incentive plan⁸⁶ compensation granted to the

⁸⁴ Instruction 1 to Item 402(d)(2) of Regulation S-K.

⁸⁵ Tax reimbursement payments by the registrant to the executive officer for taxes, commonly known as "gross-ups," would not be reflected in this table, but would be reported in the "Other Annual Compensation" column of the Summary Compensation Table. Instruction 2 to Item 402(d)(2) of Regulation S-K.

⁸⁶ See Item 402(a)(7)(iii) of Regulation S-K for the definition of this term.

named executive officers during the last fiscal year would have been required to be disclosed in tabular format on a plan-by-plan basis. However, consistent with other efforts to streamline and consolidate the data sought, the proposed Stock Price-Based Plans table (LTIP Table A) and the Non-Stock Price-Based Plans table (LTIP Table B) have been consolidated,⁸⁷ the information sought streamlined, and the payout information deleted as duplicative of information in the Summary Compensation Table.⁸⁸

The revised, consolidated table is as follows:

⁸⁷ Item 402(e) of Regulation S-K.

⁸⁸ The requirement for disclosure of grant date value has been deleted. At the suggestion of commenters, the titles of the target value award columns have been revised to reflect more accurately the actual terminology of a majority of plans covered.

LONG-TERM INCENTIVE PLANS - AWARDS IN LAST FISCAL YEAR

Name (a)	Number of shares, units or other rights (b)	Performance or other period until maturation or payout (c)	Estimated future payouts under non-stock price-based plans		
			Threshold (\$ or ¢) (d)	Target (\$ or ¢) (e)	Maximum (\$ or ¢) (f)
CEO					
A					
B					
C					
D					

As under the proposal, the final rule encompasses awards under long-term incentive plans that are stock-based,⁸⁹ where the measurement of the benefits to be received by the executive is a function of movements in the market price of the underlying registrant security, as well as plans prescribing performance criteria other than or in

addition to market price.⁹⁰ As noted above, restricted stock awards whose vesting is conditioned upon the satisfaction of a specified performance goal as well as the passage of time will be reported in this table if not reported as awards of restricted stock in the Summary Compensation Table. Tandem grants of two instruments, only one of

which may be covered by this provision, would be required to be reported only in the table applicable to the other instrument; duplicative reporting as a long-term incentive plan award is not required. For example, the grant of an option in tandem with a performance share or unit would be disclosed as an option grant.⁹¹

⁸⁹ As contemplated by the proposing release, grants of instruments such as phantom stock (denominated in "shares" or "options") and performance share units payable on the basis of the registrant's stock price performance would be reported in this table.

⁹⁰ Each LTIP award to a named executive officer in the last completed fiscal year would be disclosed, with an identification of the plan involved if there was more than one such award. Instruction 3 to Item 402(e) of Regulation S-K.

⁹¹ Instruction 6 to Item 402(e) of Regulation S-K. The tandem instrument would be disclosed as a material term of the option. Instruction 3 to Item 402(c) of Regulation S-K.

Other required disclosures carried over from the proposal are the estimated payouts realizable in relation to the performance targets, and a description in footnote or narrative text of both the performance-based formula or measure and the range of performance necessary to achieve the threshold,⁹² target⁹³ and maximum⁹⁴ payout amounts. As suggested by some commenters, the rule permits a registrant to substitute a representative amount if it is unable to determine the target award range. Estimated payout information is not required for plans based solely on stock price. Actual amounts paid or payable (but deferred at the election of the named executive officer) at maturation, both for such plans and non-stock price-based plans, must be disclosed in the Summary Compensation Table.

Registrants may use more generalized disclosure to the extent necessary to preclude disclosure of confidential business information.⁹⁵ A general statement similar to the following would satisfy this requirement for a performance plan tied to achieving certain specified growth rates of a registrant's return on equity.

Illustration: Payouts of awards are tied to achieving specified levels of return on equity. The target amount will be earned if 100% of the targeted EPS growth rate is achieved. The threshold amount will be earned at the achievement of 90% of the targeted EPS growth rate and the maximum award amount will be earned at achieving 130% of the targeted EPS growth rate.

E. Pension and Other Defined Benefit or Actuarial Plan Disclosure

Item 402(f), which covers pension and other defined benefit or actuarial retirement plans, has been adopted substantially as proposed, except that it does not include disclosure with respect to defined contribution plans.⁹⁶ Rather, like the former Item 402 requirement, the

revised item limits disclosure to estimated post-retirement benefits under pension and other defined benefit or actuarial plans. No information regarding these plans is required to be presented in the Summary Compensation Table.

The principal change from the former requirements is that the revised item focuses on estimated annual benefits payable, thus eliminating the plan descriptions cited by many commenters as both unnecessary and confusing.⁹⁷ As under the former requirements, two methods of providing the estimated benefits information are provided: for plans under which benefits are determined primarily by final (or average final) compensation, a table showing benefits by compensation and years of service classifications;⁹⁸ and for plans under which benefits are determined in a different manner, a description of the formula and the estimated annual amounts payable for each of the named executives.

With respect to plans under which benefits are determined primarily by final compensation, registrants must disclose the entire pensionable compensation base, and include all prospective benefits in the mandated table, whether payable under qualified or non-qualified plans. While the former item required that covered compensation be related to the compensation reported in the Cash Compensation Table, the revised item refers instead to the broader compensation base reflected in the Summary Compensation Table.⁹⁹

Questions were raised by commenters as to the need to disclose annual accruals in connections with defined benefit or actuarial plans pursuant to

this or any other part of Item 402. Such disclosure is not required.

F. Director Compensation

No change has been made to former Item 402 requirements governing disclosure of director compensation, except for a clarifying instruction.¹⁰⁰ Under the broad language of the former and current provisions, disclosure of any standard or non-standard compensation arrangement must be made in textual narrative, naming each director thus compensated and stating the specific amounts paid. An instruction has been added to the former requirement to make it clear that the material terms of non-standard arrangements with directors, including consulting arrangements, must be described. Registrants must include the full amount paid under any consulting arrangement in the last completed fiscal year.

As discussed in the proposing release, questions have arisen under former Item 402 as to its application in the case of "charitable award" or "director legacy" programs. Under such programs, registrants typically agree to make a future donation to one or more charitable institutions in a participating director's name, payable by the registrant upon the director's death or retirement, or some other designated event. Funding vehicles for these programs commonly take the form of corporate-owned insurance policies on the lives of participating directors.

Various corporate and other commenters maintained that charitable award or legacy arrangements need not be disclosed, since the directors are not receiving value through the arrangement. Other commenters contended that such arrangements should be disclosed to shareholders since the arrangements clearly relate to directors' board service, and the premiums can be considerable, particularly relative to amounts paid annually to directors, and are material in assessing the relationship of directors to the registrant. The Commission agrees, and thus reaffirms its initial conclusion that such arrangements are required to be disclosed pursuant to the requirements of Item 402(g).

In response to the Commission's request for comment on the need to revise the director compensation disclosure provisions governing disclosure of other arrangements

⁹² Instruction 4 to Item 402(e) of Regulation S-K (defining "threshold" as "the minimum amount payable for a certain level of performance under the plan").

⁹³ Id. (defining "target" as "the amount payable if the specified performance target(s) are reached").

⁹⁴ Id. (defining "maximum" as "the maximum payout possible under the plan").

⁹⁵ Instruction 2 to Item 402(e) of Regulation S-K.

⁹⁶ Accordingly, the only information required for DCPs will be the registrant's annual contributions reported in the "All Other Compensation" column of the Summary Compensation Table.

⁹⁷ Information on terms of non-qualified plans other than the payment schedule will continue to be available in exhibits to the registrant's Form 10-K, as discussed below.

⁹⁸ Instructions 4 and 5 to former Item 402(b) of Regulation S-K, which relate to the pension table, were not included in the proposal, but have been restored to the item as revised. Instructions 1 and 2 to Item 402(f) of Regulation S-K.

⁹⁹ As proposed and adopted, the sample table provides remuneration categories up to \$500,000 to reflect compensation trends, rather than up to \$225,000, as formerly. However, registrants need not extend the table beyond amounts applicable to the company. Item 402(f)(1) of Regulation S-K.

¹⁰⁰ As proposed, only annual compensation items would have been covered. By contrast, as adopted, compensation required to be reported under any column of the Summary Compensation Table must be included if it comprises part of the pensionable compensation base pursuant to the plan.

¹⁰⁰ Instruction to Item 402(g)(2) of Regulation S-K

entered into in consideration of a director's service, several commenters endorsed the need for clarification of the nature and scope of the mandated disclosure with respect to director charitable award or legacy arrangements. Application of the new instruction will require registrants to identify each director participant and the amount of the total legacy or award.

G. Employment Contracts and Termination, Severance and Change-of-Control Arrangements

The Commission has amended the proposed line item requiring a narrative description of registrant termination of employment and change-of-control arrangements to encompass all employment contracts with the CEO or any other named executive, and, consistent with the upward adjustment of the dollar benchmark for designating named executives, to raise the reporting threshold from \$60,000 to \$100,000.¹⁰¹ A number of commenters pointed out that shareholders have a clear interest in knowing what contractual commitments the board has made on behalf of the registrant, both with respect to present inducements to join the registrant's top management and future promises, and that the Commission should not delete the requirement to disclose employment contracts in its revision of Item 402.

H. Board Compensation Committee Report

The proposal to require a report by the Board Compensation Committee of the bases for named executive officer compensation and the relationship of such compensation to company performance provoked the strongest comment of any of the proposals concerning executive compensation. While shareholders expressed great enthusiasm for the report, the corporate community and practicing bar raised substantial concerns. Some argued that the report was an undue intrusion into the internal affairs of the company and interfered with the operation of the state-law business judgment rule; others argued that the report would interfere unduly with the functioning of the Committee and would deter people from serving as directors. Some questioned the authority of the Commission to require such disclosure, and suggested that the Commission has not previously required, and should not begin to require, disclosure of the bases for board or committee actions. These commenters contended that individual directors vote on a particular matter for

a myriad of reasons, at times adopting compromise positions, and that disclosure of such information therefore should not be required. A number of commenters also raised concerns about the appropriateness of public assessments of individual officers' performances, particularly in the case of those other than the CEO, and the need for disclosure of proprietary business information in the discussion of the performance of these executive officers. Finally, many raised concerns about the potential for litigation with respect to these reports, particularly in light of the signature requirement.

The Commission continues to believe that disclosure of the Compensation Committee's policies will enhance shareholders' ability to assess how well directors are representing their interests, and thus is an appropriate and necessary improvement to the disclosure concerning executive compensation in the proxy statement clearly within the Commission's authority. The disclosure does not impose new fiduciary standards on directors, or require any particular actions or procedures. Also, it is not inconsistent with the business judgment standards that, where applicable, protect reasonable and good faith action by the directors. While some contend that requiring a discussion of the bases for Compensation Committee or Board action is unprecedented, extensive disclosure is required as to the Board's basis for concluding that a going-private or roll-up transaction is fair to shareholders.¹⁰²

The Commission does not intend to disrupt the discussions among the Compensation Committee members. To the extent that the proposing release, in its analogy to the Management's Discussion and Analysis requirement,¹⁰³ suggested to readers that the report should outline these discussions, that is not the intent of the requirement. To the contrary, the report requires disclosure of the bases for the Committee's action, and the Committee's discussion of the relationship, if any, between corporate performance and executive compensation. It does not require a discussion of each individual Committee members' reasons or motivations for supporting the Committee's recommendations. A description of the rationale of the Committee for the reported compensation and its

relationship to performance is all that is required.

In response to concerns expressed by commenters with respect to application of the proposed report requirement to the named executive officers subordinate to the CEO, the Commission has revised the requirement to limit the specific discussion to the CEO.¹⁰⁴ In place of the discussion of the compensation of each of the other named executives and its relationship to registrant performance, a discussion is required of the compensation policies with respect to the registrant's executive officers, including the extent to which such compensation (in the aggregate) is performance-related, and the performance measures that are considered (e.g., sales, earnings, return on assets, return on equity or market share).¹⁰⁵ As under the proposal, the Committee would not be required to disclose target levels with respect to specific quantitative or qualitative performance-related factors, or any factors or criteria involving confidential commercial or business information, disclosure of which would adversely affect the registrant.¹⁰⁶

The Commission appreciates the concern registrants have expressed about litigation. The purpose of the report is to inform shareholders of the Committee's good-faith rationale for its compensation actions. If shareholders are not satisfied with the decisions reflected in the report, the proper response is the ballot, not resort to the courts to challenge the disclosure. To make clear the Commission's intentions in this regard, the provisions requiring the report, as well as the related requirement for the Performance Graph discussed below, have been revised to provide for the same treatment of such disclosures as accorded information required to be delivered to shareholders in connection with the annual election of directors in the annual report.¹⁰⁷ Specifically, the disclosure will not be deemed soliciting material or to be filed under section 18.¹⁰⁸

¹⁰⁴ Item 402(k)(2) of Regulation S-K.

¹⁰⁵ Item 402(k)(1) of Regulation S-K.

¹⁰⁶ Instruction 2 to Item 402(k) of Regulation S-K.

¹⁰⁷ See Rule 14a-3(c) under the Exchange Act [17 CFR 240.14a-3(c)].

¹⁰⁸ 15 U.S.C. 78r. Specifically, revised Item 402(a)(9) provides that this material shall not be (citations omitted): "deemed to be 'soliciting material' or to be 'filed' with the Commission or subject to Regulation 14A or 14C, or to the liabilities of Section 18 of the Exchange Act, except to the extent that the registrant specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into any filing under the Securities Act or the Exchange Act."

¹⁰² See Rule 13e-3 under the Exchange Act [17 CFR 240.13e-3]; Item 8 of Schedule 13E-3 [17 CFR 240.13e-100]; Item 910 of Regulation S-K [17 CFR 229.910].

¹⁰³ Item 303 of Regulation S-K [17 CFR 229.303].

¹⁰¹ Item 402(h) of Regulation S-K.

The rules also have been revised to specify that the Board Compensation Committee Report and the Performance Graph are required only in a proxy or information statement relating to an annual meeting of security holders (or special meeting or written consents in lieu of such meeting) at which directors are to be elected.¹⁰⁹ Accordingly, this information is not deemed to be incorporated by reference into any Securities Act or Exchange Act filing, except to the extent that the registrant specifically incorporates it by reference into such filing.

While the Board Compensation Committee Report will continue to be made over the names of the Compensation Committee members, the requirement for individual signatures has been deleted in response to comment. The signature requirement was intended simply to increase the Committee members' focus on the specific disclosure obligation. The requirement that the report be made over the names of the Committee will accomplish the same purpose and avoid the practical difficulties involved in obtaining manual signatures.¹¹⁰

Questions have been raised as to the consequences of board review of the Compensation Committee action or recommendations with respect to executive compensation. No additional disclosure or report will be necessary, unless the Board of Directors rejects or modifies, in any material way, the action or recommendations of the Compensation Committee with respect to CEO compensation or executive officer compensation policies. In such case, the report would be made over the names of the members of the Board and would include disclosure of the reasons that the Board was providing the report rather than the Compensation Committee.¹¹¹

If the registrant does not have a compensation committee or other board committee performing equivalent functions, the requirements with respect to the Compensation Committee Report will apply to the entire board of directors.

Finally, in response to the concerns raised by commenters about requiring discussion of compensation decisions with respect to particular executives made prior to the adoption of the new requirements, the decisions made prior to the effective date of revised Item 402 with respect to the CEO's compensation may be excluded from Board

Compensation Committee Report disclosure.

I. Performance Graph

With certain modifications, the Commission has adopted the proposal requiring registrants to provide a line graph comparing the registrant's cumulative total shareholder return with a performance indicator of the overall stock market and either a published industry index or registrant-determined peer comparison. In prescribing such a comparison, the Commission recognizes that many and varied performance benchmarks other than shareholder return are used in the design of executive compensation packages. However, as reflected in many shareholder letters of comment, shareholder return is a primary benchmark for shareholders and investors in assessing corporate performance.

In response to commenters' recommendations that registrants, particularly those not in the S&P 500, be given the flexibility to select another broad market index, revised Item 402(f) now affords registrants that are not included in the S&P 500 a choice to use another broad equity market index¹¹² that includes companies that trade on the same exchange or NASDAQ market, or are of comparable market capitalization. Registrants will be expected to use the same index from year to year, absent an accompanying narrative explanation of the reasons for the change.¹¹³ In addition to providing this explanation, a registrant that selects a new index for comparison in a given fiscal year must compare its return with that on both the old and new index in the graph appearing in that year's proxy or information statement.

In another change from the proposal, this provision requires that the total return figures be presented on a dividend reinvested basis. Commenters have pointed out that only in this manner will inter-company comparability be assured. Companies that have elected to pass excess cash

flow through to investors otherwise would appear to have provided a significantly lower return than in reality would be the case.

Under the proposal, issuers were free to set the base year at any point in time, so long as a minimum five-year period was depicted. A number of commenters noted that such an approach could lead to the selection of a base year beyond five years for the sole purpose of casting performance in an unduly favorable light. The rule as adopted thus establishes a mandatory measurement point fixed at the close of trading on the last trading day preceding the first day of the fifth preceding fiscal year, with disclosure mandated from that time through and including the registrant's last completed fiscal year.¹¹⁴ A shorter period may be used if the class of registrant equity forming the basis for the comparison has been registered under the Exchange Act for a shorter time. Adopting a mandatory measurement point not only will reduce the potential for manipulation, but also will enhance inter-company comparability.

The proposed rules also would have required registrants to compare their total return against a group of peer companies, using either return on a nationally recognized industry index or a registrant-constructed peer group index. In response to commenter questions about the definition of a "nationally recognized index," the term "published index" has been substituted in the final rule to make clear that the Commission is not limiting the indices that may be used.¹¹⁵ The rules also have been revised to clarify that the registrant has broad discretion in determining its peer comparison. The comparison may be made to one or a number of other companies, including foreign issuers. Moreover, the registrant may use bases other than its industry or line of business for determining its peer comparison, so long as such bases are disclosed.

Several commenters expressed concern regarding difficulties likely to be encountered in presenting the requisite peer comparison, particularly by registrants whose peers are privately-held companies, or

¹¹² For example, the following broad indices may be used if total return data on a dividend reinvested basis are shown in a manner consistent with the format required by item 402(f): the S&P 500 Composite Index, the Dow Jones Equity Market Index, the American Stock Exchange Market Value Index, the Wilshire 5000 Equity Index, and the Russell 1000, 2000 or 3000. Mandated use of the S&P 500 for registrants included in that index will enhance inter-company comparability. The S&P 500 composite is one of the 12 recognized leading economic indicators used by the Department of Commerce. See *The Handbook of Cyclical Indicators* (Dept. Commerce 1984). See also *Economic Report of the President* (transmitted to Congress February 1992) at 403.

¹¹³ Item 402(f)(4) of Regulation S-K.

¹⁰⁹ Item 402(a)(8). The same treatment is given to the Option Repricing disclosure discussed below.

¹¹⁰ Item 402(k)(3) of Regulation S-K.

¹¹¹ *Id.*

¹¹⁴ Item 402(f)(2) of Regulation S-K. Registrants would be free to include earlier years in the comparison, but would be required to use the prescribed base point. Instruction 3 to Item 402(f).

¹¹⁵ The term "published index" means any index which was prepared by a party other than the registrant or an affiliate and is accessible to the registrant's shareholders. An exception is provided for those indices prepared by a registrant or affiliate that are widely recognized and used, since the potential for conflict is mitigated by wide-spread and multiple usage. Item 402(f)(3) of Regulation S-K.

subsidiaries or divisions of larger publicly-held companies. To address this concern, the rule now gives registrants that do not believe it feasible to provide a peer comparison to disclose this belief, and to compare their shareholder return to one or more

companies selected on the basis of similar market capitalization

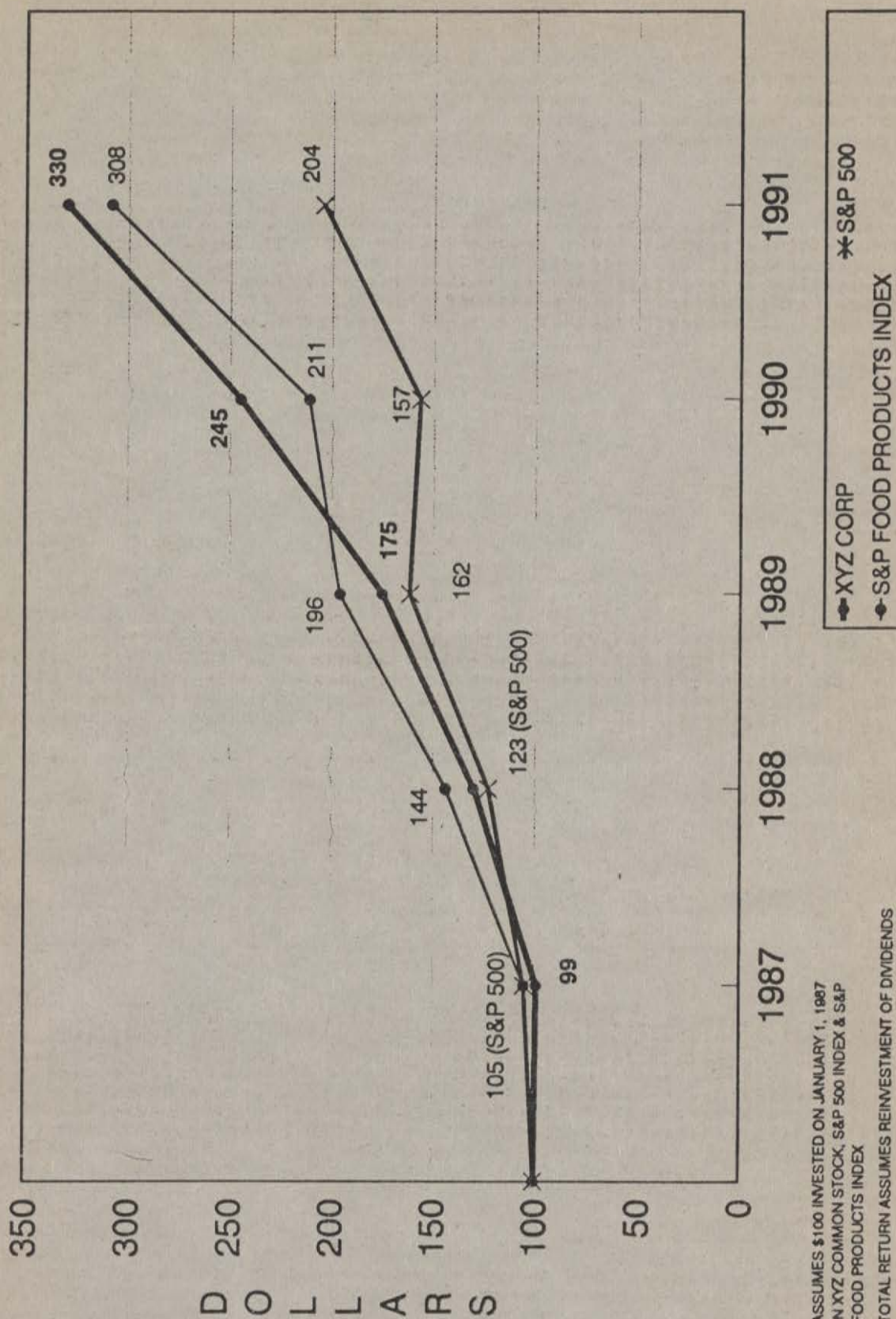
To the extent feasible, the registrant should use comparable methods of presentation and assumptions for the total cumulative return calculations necessary for the requisite broad market and peer index comparisons with the

registrant's return. Where the registrant elects to construct its own peer group index, the same methodology must be used in calculating both the registrant's total return and that on the registrant-constructed peer index.

To illustrate:

BILLING CODE 8010-01-M

COMPARISON OF FIVE YEAR CUMULATIVE TOTAL RETURN* AMONG XYZ CORP, S&P 500 INDEX & S&P FOOD PRODUCTS INDEX**



ASSUMES \$100 INVESTED ON JANUARY 1, 1987
IN XYZ COMMON STOCK, S&P 500 INDEX & S&P
FOOD PRODUCTS INDEX

*TOTAL RETURN ASSUMES REINVESTMENT OF DIVIDENDS

** FISCAL YEAR ENDING DECEMBER 31

Commenters also expressed concern over the possibility of increased exposure to liability in connection with identifying peer companies and constructing an appropriate index. As noted above, the Performance Graph, as adopted, will receive the same treatment as the annual report to security holders, and will appear only in registrant proxy or information statements relating to annual meetings of security holders (or special meetings or written consents in lieu of such meetings) at which directors are to be elected. This disclosure will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference into any such filing.¹¹⁶

¹¹⁶ Items 402(a)(8) and (a)(9) of Regulation S-K.

Registrants may provide, in their discretion, additional presentations using other measures of performance for comparable periods.

J. Option/SAR Repricing Report

The proposed requirement for a report by a registrant's compensation committee (or other board committee performing equivalent functions, or, in the absence of any such committee, the entire board of directors) triggered by a

repricing or equivalent amendment or replacement of an outstanding option or SAR has been adopted, as modified to reflect commenters' views.¹¹⁷ Triggering events under this provision have been narrowed to include only repricing of options or SARs held by a named executive officer, or equivalent amendment or replacement of options or SARs, effected in the last completed fiscal year and after the effective date of these rules. Further, the requirement does not extend to any repricing transactions that occurred before a registrant became subject to the reporting provisions of section 13(a) or 15(d) under the Exchange Act.

As adopted, the report requirement is triggered by any action taken in the last completed fiscal year to lower the exercise price of an option or SAR held by a named executive officer, whether through amendment, cancellation or replacement grants or any other means.¹¹⁸ The rule does not cover post-grant strike price changes resulting from:

¹¹⁷ Item 402(i) of Regulation S-K.

¹¹⁸ For example, in addition to a traditional option or SAR repricing, the report would be triggered by the grant of a tandem option at or below market price relating to an existing underwater option, where cancellation or replacement of the old option may not occur until some time later, when the new, tandem option is exercised.

a formula-based repricing mechanism in existence at the time of grant, which is characteristic of some indexed and premium priced options; the operation of a plan antidilution provision; or a recapitalization or similar transaction affecting equally all holders of securities of the same class.¹¹⁹

If a triggering event within the scope of the rule occurs, a report must be provided over the names of the members of the appropriate registrant committee discussing the reasons for the repricing of the named executives' options and SARs during the last completed fiscal year.¹²⁰ In addition, the registrant must provide tabular information with respect to the repricing of options/SARs held by any executive officer over the shorter of the last ten completed fiscal years or the period in which the registrant has been subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act. This 10-year disclosure period was selected to reflect the typical 10-year term of a compensatory stock option.

Except as narrowed to focus solely on repricing, the repricing table is unchanged from the proposal:

¹¹⁹ Instruction 4 to Item 402(i) of Regulation S-K.

¹²⁰ Instruction 1 to Item 402(i) of Regulation S-K.

TEN-YEAR OPTION/SAR REPRICINGS

Name	Date	Number of options/SARs repriced or amended (#)	Market price of stock at time of repricing or amendment (\$)	Exercise price at time of repricing or amendment (\$)	New exercise price (\$)	Length of original option term remaining at date of repricing or amendment
(a)	(b)	(c)	(d)	(e)	(f)	(g)

The 10-year repricing table need not be provided by a small business issuer eligible to use Regulation S-B.¹²¹

K. Additional Information with Respect to Compensation Committee Interlocks and Insider Participation in Compensation Decisions

Revised Item 402(j) requires disclosure of specified information regarding the relationships of members of the registrant's board of directors under circumstances in which shareholders may have greater concerns regarding the independence of board compensation decisionmaking. This provision has been substantially revised from that proposed. As noted above, small business issuers eligible to use

Regulation S-B are not subject to the Compensation Committee Interlocks and Insider Participation disclosure requirement.¹²²

The relationships provisions have been substantially reformatting, and no longer require disclosure in the event of option or SAR repricing. The revised provisions require disclosure under a specified caption—"Compensation Committee Interlocks and Insider Participation." The provision requires that the registrant identify the members of its compensation committee (or other committee performing comparable functions), specifying any member who:

(a) Was, at any time during the last completed fiscal year, an officer or

employee of the registrant or any of its subsidiaries;

(b) Was formerly an officer of the registrant or any of its subsidiaries; or

(c) Had any relationship requiring disclosure by the registrant under Item 404 of Regulation S-K.

If any relationship requiring Item 404 disclosure existed, the information required by Item 404 with respect to that person must be set forth.

In the event the registrant does not have a compensation committee (or committee with comparable responsibilities), the item requires disclosure of the participation in its Board of Directors' deliberations on executive compensation by any officer or employee, or former officer, of the registrant or any of its subsidiaries.

¹²¹ Item 402(a)(1)(i) of Regulation S-K.

¹²² Item 402(a)(1)(i) of Regulation S-K.

Disclosure of specified executive officer-director interlocks continues to be required. The interlocks requiring disclosure have been revised to include those situations where an executive officer of one company serves on the compensation committee of another company that has an executive officer serving on the first company's board of directors. In response to the proposing release's inquiry, several commenters responded that the potential conflict of interest in this circumstance was sufficiently great to require the interlock disclosure.¹²³ Interlocks involving not-for-profit entities have been excluded in response to public comment that such relationships do not raise the same level of concern with respect to the independence of the compensation-setting process.¹²⁴

Where a specified interlock existed, the proposal would have required disclosure of all financial interests in excess of \$60,000 between the registrant and the director of the registrant who served as an executive officer of the other entity (and his or her affiliates). The proposal also called for disclosure of any means by which that interlocking director could benefit from actions of the registrant or its executive officers, and all discussions relating to compensation matters between the interlocking director and members of the compensation committee. These disclosures have been reduced substantially; in particular, the requirements with respect to benefits from actions of the registrant and discussions relating to compensation have been deleted. Instead, the provision as adopted requires that the relationship disclosure mandated under Item 404 of Regulation S-K accompany disclosure of the interlock.

Finally, in response to comments urging the Commission to allow for a transition period in recognition of the needs of many registrants, particularly mid-sized and smaller companies, the disclosure will be required only with respect to director relationships existing on or after January 1, 1993.

L. Revised Schedule 14A, Item 10—Information Required in Connection with Shareholder Approval of a Compensation Plan

The Commission has adopted proposals to simplify the proxy statement disclosure required under Item 10 of Schedule 14A (and Item 1 of Schedule 14C) for registrants that solicit

shareholder action with respect to a compensation plan. Former Item 10 required extensive disclosure concerning not only of the plan subject to approval, but also of all existing compensation plans. A number of commenters agreed that information on plans not subject to a vote was not helpful to shareholders; the requirement therefore has been eliminated as proposed.

With respect to the disclosure requirements for new plans, the Commission proposed to require the requisite Item 402 information to be presented in tabular format. This proposal is being adopted without change. For existing compensation plans submitted to a vote, the former requirement for three years of detailed information as to all such plans has been eliminated, as proposed.

M. Form 10-K Compensation Disclosure

The Commission has adopted the proposed technical revision to Item 11 of Form 10-K to conform to the amendment to Item 10 of Schedule 14A.

In light of the proposed deletion of mandatory plan descriptions, the Commission requested comment on the need for disclosure of the location of filings containing plans limited to senior executives. The proposing release asked whether the date and type of such filings should be disclosed to facilitate shareholder review of plan terms no longer subject to disclosure under Item 402. After consideration of the comments, the Commission has revised Item 14 of Form 10-K to require an annual listing of all executive compensation plans required to be filed as exhibits to the Form, identifying the Commission filing to which a particular plan document has been appended.¹²⁵

N. Revised Item 403(b) Table—Security Ownership of Management

The proposal included a table, encaptioned "Total Common Equity Based Holdings," designed to show the nature and scope of each named executive's equity stake in the registrant, unrestricted stock beneficially owned, excluding options and SARs, option shares and restricted stock held, along with direct or indirect share ownership under section 13(d) of the Exchange Act.¹²⁶ Consistent with the Commission's efforts to minimize redundant disclosure, and as suggested

by a number of commenters, that table has not been adopted. The Commission instead has added the named executives to the current S-K Item 403(b) table.¹²⁷

III. Cost-Benefit Analysis

In the proposing release, the Commission requested the public to supply its views and any supporting information to aid in the evaluation of the costs and benefits associated with the implementation of the proposed disclosure requirements. The Commission has considered carefully the comments received pursuant to that request. The changes made in response to these comments are designed to increase registrant cost savings without sacrificing information which would materially benefit security holders.

In response to commenters' concerns that the extent of detail required in the proposed approach would prove burdensome to registrants, and confusing to shareholders, the Commission has taken a number of steps to reduce the number of tables and limit the scope of the rules where the interests of security holders would not be harmed. To reduce the amount of information requested, four tables were eliminated in their entirety, although certain information elicited by these tables was preserved in the other sections.¹²⁸ Further, as discussed previously, a number of tables were consolidated and streamlined by reducing redundant information.

Steps also were taken to narrow the scope of the rules. In particular, commenters suggested eliminating disclosure of compensation to executive officers as a group, pointing out that the information was of little utility to shareholders, and citing the costs associated with gathering the information, particularly in view of the three-year period covered by the Summary Compensation Table. The Commission agrees with these concerns. Accordingly, significant cost reductions also should result from the elimination of executive officer group disclosure requirements.

In addition, the threshold for determining the most highly paid executives was changed, with the calculation now being based on the amount of salary and bonus paid or payable in a given fiscal year. In

¹²⁷ 17 CFR 229.403(b). For purposes of the Regulation S-K Item 403(b) table, the term "officer" has been amended to refer to "executive officer."

¹²⁸ The tables eliminated or consolidated with other tables were the Option and SAR Summary Report, the Restricted Stock Table, the Enhanced Beneficial Ownership Table and the Summary of Option Repricing and Other Adjustments.

¹²³ The interlocks covered by Item 402(j) only apply where executive officers of the registrant and the other company are involved.

¹²⁴ Instruction to Item 402(j).

¹²⁵ A conforming change has been made to Item 601(b)(10) of Regulation S-K (17 CFR 229.601(b)(10)).

¹²⁶ 15 U.S.C. 78m(d).

determining that amount, issuers may exclude amounts attributable to overseas assignments, unlike the proposal.

Other rules whose scope was narrowed from the proposing release include the Compensation Committee Interlocks and Insider Participation disclosure, the Report on Option/SAR Repricing and the Board Compensation Committee Report. Specifically, with respect to the latter requirement, the description of performance factors on which the Committee specifically relied upon has been limited to the CEO alone, together with a discussion of the committee's general policies with respect to executive officer compensation. Further, hypothetical rates of stock price appreciation in the presentation of potential realizable values of stock options and SARs have been reduced, and presentation of grant-date option (or SAR) values calculated pursuant to a recognized valuation formula such as the "Black-Scholes" option pricing model, will be permitted as an alternative to hypothetical values.

The Commission also has redesigned its regulatory scheme to strike a more effective balance between the concerns of certain classes of registrants and the interests of their shareholders. As discussed previously, to address the concerns of small businesses that may lack the resources available to larger registrants and that have different incentive compensation programs, the final rules exempt these issuers from many of the required new disclosures, including the Board Compensation Committee Report and the Performance Graph. In an effort to minimize the initial impact of the new regulatory scheme, small business issuers will be permitted to phase in the three year information required by the Summary Compensation Table and delay complying with the new rules for any filing made before May 1, 1993. The final rules also exempt investment companies registered under the Investment Company Act from all but the director compensation disclosure requirement. The reporting obligations of foreign private issuers using Form 20-F remain unchanged.

Issuers also have expressed concern that certain of the disclosure requirements could create significant exposure to liability for registrants that, in good faith, are seeking to comply with the rules. To address these concerns, the final rules have been restructured to specify those disclosure provisions that are required in all filings calling for Item 402 compensation information, and those provisions applicable only to a

proxy or information statement relating to an annual meeting of security holders at which directors are to be elected. Those items solely required in filings related to the annual election of directors also will not be required to be included in, or incorporated by reference into any of the registrant's filings under the Securities Act or Exchange Act. To further address concerns about the potential for increased litigation, the Commission has provided that the Board Compensation Committee Report and the Performance Graph will have the same status as the annual report to security holders required pursuant to the proxy rules, and, as such will not be deemed to constitute soliciting material or to be filed for purposes of section 18 of the Exchange Act.

Another complaint voiced by commenters concerned the initial burden of complying with a new regulatory scheme. In response, the Commission has adopted transition rules applicable to specific disclosure requirements and to the overall regulatory scheme. For the Board Compensation Committee Report, registrants need only disclose specific information pertaining to compensation decisions on CEO compensation made on or after the effective date of the rule. With respect to the disclosure on additional board relationships, information need only be provided with respect to relationships existing on or after January 1, 1993. The rest of the disclosure requirements must be complied with by registrants, other than small business issuers, as follows. Registrants whose fiscal year ends on or after December 15, 1992, must comply beginning with their next proxy and information statement. In the case of registration statements filed under the Securities Act or Exchange Act or periodic reports filed pursuant to the Exchange Act, registrants need not comply for filings made before January 1, 1993.

The Commission has considered commenters' views, has modified the proposals as necessary and appropriate, and has determined that the net increases in costs, if any, resulting from the implementation of today's amendments are outweighed by the value to security holders and to the market of more readily accessible and understandable information relating to the compensation practices of public companies.

IV. Summary of Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis has been prepared regarding the

amendments in accordance with 5 U.S.C. 604. A copy of the analysis may be obtained by contacting Catherine T. Dixon, Chief, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. A summary of the corresponding Initial Regulatory Flexibility Analysis appears at 57 FR 29582 [Securities Act Release No. 6940].

V. Effective Date

The amendments are effective upon publication in the *Federal Register*, in accordance with the Administrative Procedures Act, which allows for effectiveness in less than 30 days after publication, *inter alia*, "as provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The Commission has determined that compensation disclosure is important to shareholders being asked to elect or re-elect directors, and that improvements to such disclosure are necessary. There is good cause for the amendments to become effective immediately in order to assure that this improved disclosure will be in place for the 1993 proxy season.

Some registrants have indicated an interest in being able to satisfy the executive compensation requirements by complying with the amended rules as soon as possible. Immediate effectiveness will afford them that option.

For other registrants, the Commission has provided transition provisions. Registrants other than small business issuers are required to comply with the new rules for:

(1) Any new registration statement under the Securities Act, and any new registration statement or periodic report under the Exchange Act, filed on or after January 1, 1993; and

(2) Any new proxy or information statement filed on or after January 1, 1993, except that proxy or information statements filed with respect to the annual election of directors by registrants whose current fiscal year ends on or after December 15, 1992, are required to comply with the new provisions whenever filed.

Small business issuers are required to comply with the new rules for any new registration statement under the Securities Act, any new registration statement or periodic report under the Exchange Act, and any new proxy or information statement filed on or after May 1, 1993.

VI. Statutory Basis

The amendments contained herein are being adopted pursuant to sections 3(b), 6, 7, 8, 10 and 19(a) of the Securities Act, sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act, and sections 8, 20, 24, 30 and 38 of the Investment Company Act of 1940.

List of Subjects in 17 CFR Parts 228, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

VII. Text of Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations, is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a-8, 80a-29, 80a-30, 80a-37 and 80b-11, unless otherwise noted.

2. By revising § 228.402 to read as follows:

§ 228.402 (Item 402) Executive compensation.

(a) General—(1) *All compensation covered.* This item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(2) of this item, and directors covered by paragraph (f) of this item by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specified in this item. Except as provided by paragraph (a)(4) of this item, all such compensation shall be reported pursuant to this item even if also called for by another requirement, including transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to any such named executive officer or director. No item reported as compensation for one fiscal year need be reported as compensation for a subsequent fiscal year.

(2) *Persons covered.* Disclosure shall be provided pursuant to this item for each of the following (the "named executive officers"):

(i) The registrant's Chief Executive Officer or any individual acting in a similar capacity ("CEO") at the end of the last completed fiscal year, regardless of compensation level; and

(ii) The registrant's four most highly compensated executive officers other than the CEO who served as executive officers at the end of the last completed fiscal year.

Instructions to Item 402(a)(2)

1. *Determination of Most Highly Compensated Executive Officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total annual salary and bonus for the last completed fiscal year (as required to be disclosed pursuant to paragraph (b)(2)(iii)(A) and (B) of this item), but including the dollar value of salary or bonus amounts forgone pursuant to Instruction 3 to paragraph (b)(2)(iii)(A) and (B) of this item, provided, however, that no disclosure need be provided for any executive officer, other than the CEO, whose total annual salary and bonus, as so determined, does not exceed \$100,000.

2. *Inclusion of Executive Officer of Subsidiary.* It may be appropriate in certain circumstances for a registrant to include an executive officer of a subsidiary in the disclosure required by this item. See Rule 3b-7 under the Exchange Act (17 CFR 240.3b-7).

3. *Exclusion of Executive Officer due to Unusual or Overseas Compensation.* It may be appropriate in limited circumstances for a registrant not to include in the disclosure required by this item an individual, other than its CEO, who is one of the registrant's most highly compensated executive officers. Among the factors that should be considered in determining not to name an individual are: (a) the distribution or accrual of an unusually large amount of cash compensation (such as a bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; and (b) the payment of amounts of cash compensation relating to overseas assignments that may be attributed predominantly to such assignments.

(3) *Information for full fiscal year.* If the CEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the CEO) served as an executive officer of the registrant (whether or not in the same position) during any part of a fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(4) *Transactions with third parties reported under item 404.* This item includes transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to a named executive officer. No information need be given in response to any paragraph of this item as to any such third-party transaction if the transaction has been

reported in response to Item 404 of Regulation S-B (§ 228.404).

(5) *Omission of table or column.* A table or column may be omitted, if there has been no compensation awarded to, earned by or paid to any of the named executives required to be reported in that table or column in any fiscal year covered by that table.

(6) *Definitions.* For purposes of this item:

(i) The term *stock appreciation rights (SARs)* refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the registrant or a named executive officer.

(ii) The term *plan* includes, but is not limited to, the following: any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock or restricted stock units, phantom stock, stock options, SARs, stock options in tandem with SARs, warrants, convertible securities, performance units and performance shares, and similar instruments. A plan may be applicable to one person. Registrants may omit information regarding group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

(iii) The term *long-term incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a period longer than one fiscal year, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant's stock price, or any other measure, but excluding restricted stock, stock option and SAR plans.

(7) *Location of specified information.* The information required by paragraph (h) of this item need not be provided in any filings other than a registrant proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(b) *Summary compensation table—(1) General.* The information specified in paragraph (b)(2) of this item, concerning the compensation of the named executive officers for each of the

registrant's last three completed fiscal years, shall be provided in a Summary Compensation Table, in the tabular format specified below.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Annual Compensation			Long Term Compensation			All other compensation (\$)
		Salary (\$)	Bonus (\$)	Other annual compensation (\$)	Awards		Payouts	
					Restricted stock award(s) (\$)	Options/ SARs (#)	(h) LTIP payouts (\$)	
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
CEO.....								
A.....								
B.....								
C.....								
D.....								

(2) The Table shall include: (i) The name and principal position of the executive officer (column (a));

(ii) Fiscal year covered (column (b));

(iii) Annual compensation (columns (c), (d) and (e)), including:

(A) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(B) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d)); and

Instructions to Item 402(b)(2)(iii) (A) and (B)

1. Amounts deferred at the election of a named executive officer, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], or otherwise, shall be included in the salary column (column (c)) or bonus column (column (d)), as appropriate, for the fiscal year in which earned. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, that fact must be disclosed in a footnote and such amount must be disclosed in the subsequent fiscal year in the appropriate column for the fiscal year in which earned.

2. For stock or any other form of non-cash compensation, disclose the fair market value at the time the compensation is awarded, earned or paid.

3. Registrants need not include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer pursuant to a registrant program under which stock, stock-based or other forms of non-cash compensation may be received by a named executive in lieu of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation in lieu of

salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Table corresponding to that fiscal year (i.e., restricted stock awards (column (f)); options or SARs (column (g)); all other compensation (column (i)), or, if made pursuant to a long-term incentive plan and therefore not reportable at grant in the Summary Compensation Table, a footnote must be added to the salary or bonus column so disclosing and referring to the Long-Term Incentive Plan Table (required by paragraph (e) of this item) where the award is reported.

(C) The dollar value of other annual compensation not properly categorized as salary or bonus, as follows (column (e)):

(1) Perquisites and other personal benefits, securities or property, unless the aggregate amount of such compensation is the lesser of either \$50,000 or 10% of the total of annual salary and bonus reported for the named executive officer in columns (c) and (d);

(2) Above-market or preferential earnings on restricted stock, options, SARs or deferred compensation paid during the fiscal year or payable during that period but deferred at the election of the named executive officer;

(3) Earnings on long-term incentive plan compensation paid during the fiscal year or payable during that period but deferred at the election of the named executive officer;

(4) Amounts reimbursed during the fiscal year for the payment of taxes; and

(5) The dollar value of the difference between the price paid by a named executive officer for any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries

(through deferral of salary or bonus, or otherwise), and the fair market value of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant.

Instructions to Item 402(b)(2)(iii)(C)

1. Each perquisite or other personal benefit exceeding 25% of the total perquisites and other personal benefits reported for a named executive officer must be identified by type and amount in a footnote or accompanying narrative discussion to column (e).

2. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant and its subsidiaries.

3. Interest on deferred or long-term compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, [26 U.S.C. 1274(d)]) at the rate that corresponds most closely to the rate under the registrant's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate.

4. Dividends (and dividend equivalents) on restricted stock, options, SARs or deferred compensation denominated in stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the

registrant's common stock. Only the preferential portion of the dividends or equivalents must be included.

(iv) Long-term compensation (columns (f), (g) and (h)), including:

(A) The dollar value (net of any consideration paid by the named executive officer) of any award of restricted stock, including share units (calculated by multiplying the closing market price of the registrant's unrestricted stock on the date of grant by the number of shares awarded) (column (f));

(B) The sum of the number of stock options granted, with or without tandem SARs, and the number of freestanding SARs (column (g)); and

(C) The dollar value of all payouts pursuant to long-term incentive plans ("LTIPs") as defined in paragraph (a)(6)(iii) of this item (column (h)).

Instructions to Item 402(b)(2)(iv)

1. Awards of restricted stock that are subject to performance-based conditions to vesting, in addition to lapse of time and/or continued service with the registrant or a subsidiary, may be reported as LTIP awards pursuant to paragraph (e) of this item instead of in column (f). If this approach is selected, once the restricted stock vests, it must be reported as an LTIP payout in column (h).

2. The registrant shall, in a footnote to column (f), disclose:

a. The number and value of the aggregate restricted stock holdings at the end of the last completed fiscal year. Value shall be calculated as specified in paragraph (b)(2)(iv)(A) of this item;

b. For any restricted stock award that will vest, in whole or in part, in under three years from the date of grant, the total number of shares awarded and the vesting schedule; and

c. Whether dividends will be paid on the restricted stock reported in the column.

3. If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of stock options or freestanding SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), the registrant shall include the number of options or freestanding SARs so repriced as Stock Options/SARs granted and required to be reported in column (g).

4. If any specified performance target, goal or condition to payout was waived with respect to any amount included in LTIP payouts reported in column (h), the registrant shall so state in a footnote to column (h).

(v) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Summary Compensation Table (column (i)). Any compensation reported in this column for the last completed fiscal year shall be identified and quantified in a footnote. Such compensation shall include, but not be limited to:

(A) The amount paid, payable or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(1) The resignation, retirement or any other termination of such executive officer's employment with the registrant and its subsidiaries; or

(2) A change in control of the registrant or a change in the executive officer's responsibilities following such a change in control.

(B) The dollar value of above-market or preferential amounts earned on restricted stock, options, SARs or deferred compensation during the fiscal year, or calculated with respect to that period, except that if such amounts are paid during the period, or payable during the period but deferred at the election of a named executive officer, this information shall be reported as Other Annual Compensation in column (e). See Instructions 3 and 4 to paragraph 402(b)(2)(iii)(C) of this item;

(C) The dollar value of amounts earned on long-term incentive plan compensation during the fiscal year, or calculated with respect to that period, except that if such amounts are paid during that period, or payable during that period at the election of the named executive officer, this information shall be reported as Other Annual Compensation in column (e);

(D) Annual registrant contributions or other allocations to vested and unvested defined contribution plans; and

(E) The dollar value of any insurance premiums paid by, or on behalf of, the

registrant during the covered fiscal year with respect to term life insurance for the benefit of a named executive officer, and, if there is any arrangement or understanding, whether formal or informal, that such executive officer has or will receive or be allocated an interest in any cash surrender value under the insurance policy, either:

(1) The full dollar value of the remainder of the premiums paid by, or on behalf of, the registrant; or

(2) If the premiums will be refunded to the registrant on termination of the policy, the dollar value of the benefit to the executive officer of the remainder of the premium paid by, or on behalf of, the registrant during the fiscal year. The benefit shall be determined for the period, projected on an actuarial basis, between payment of the premium and the refund.

Instructions to Item 402(b)(2)(v)

1. LTIP awards and amounts received on exercise of options and SARs need not be reported as All Other Compensation in column (i).

2. Information relating to defined benefit and actuarial plans need not be reported.

3. Where alternative methods of reporting are available under paragraph (b)(2)(v)(E) of this item, the same method should be used for each of the named executive officers. If the registrant chooses to change methods from one year to the next, that fact, and the reason therefor, should be disclosed in a footnote to column (i).

Instruction to Item 402(b)

Information with respect to fiscal years prior to the last completed fiscal year will not be required if the registrant was not a reporting company pursuant to Section 13(a) or 15(d) of the Exchange Act at any time during that year, except that the registrant will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

(c) *Option/SAR grants table.* (1) The information specified in paragraph (c)(2) of this item, concerning individual grants of stock options (whether or not in tandem with SARs), and freestanding SARs made during the last completed fiscal year to each of the named executive officers shall be provided in the tabular format specified below:

OPTION/SAR GRANTS IN LAST FISCAL YEAR

[Individual Grants]

Name	Options/SARs granted (#)	Percent of total options/SARs granted to employees in fiscal year	Exercise or base price (\$/Sh)	Expiration date
(a)	(b)	(c)	(d)	(e)
CEO				
A				
B				
C				
D				

(2) The Table shall include, with respect to each grant:

(i) The name of the executive officer (column (a));

(ii) The number of options and SARs granted (column (b));

(iii) The percent the grant represents of total options and SARs granted to employees during the fiscal year (column (c));

(iv) The per-share exercise or base price of the options or SARs granted (column (d)). If such exercise or base price is less than the market price of the underlying security on the date of grant, a separate, adjoining column shall be added showing market price on the date of grant; and

(v) The expiration date of the options or SARs (column (e)).

Instructions to Item 402(c)

1. If more than one grant of options and/or freestanding SARs was made to a named executive officer during the last completed fiscal year, a separate line should be used to provide disclosure of each such grant. However, multiple grants during a single

fiscal year may be aggregated where each grant was made at the same exercise and/or base price and has the same expiration date, and the same performance vesting thresholds, if any. A single grant consisting of options and/or freestanding SARs shall be reported as separate grants with respect to each tranche with a different exercise and/or base price, performance vesting threshold, or expiration date.

2. Options or freestanding SARs granted in connection with an option repricing transaction shall be reported in this table. See Instruction 3 to paragraph (b)(2)(iv) of this item.

3. Any material term of the grant, including but not limited to the date of exercisability, the number of SARs, performance units or other instruments granted in tandem with options, a performance-based condition to exercisability, a reload feature, or a tax-reimbursement feature, shall be footnoted.

4. If the exercise or base price is adjustable over the term of any option or freestanding SAR in accordance with any prescribed standard or formula, including but not limited to an index or premium price provision, describe the following, either by footnote to column (c) or in narrative accompanying the Table:

(a) The standard or formula; and

(b) Any constant assumption made by the registrant regarding any adjustment to the exercise price in calculating the potential option or SAR value.

5. If any provision of a grant (other than an antidilution provision) could cause the exercise price to be lowered, registrants must clearly and fully disclose these provisions and their potential consequences either by a footnote or accompanying textual narrative.

6. In determining the grant-date market or base price of the security underlying options or freestanding SARs, the registrant may use either the closing market price per share of the security, or any other formula prescribed for the security.

(d) *Aggregated option/SAR exercises and fiscal year-end option/SAR Value Table.* (1) The information specified in paragraph (d)(2) of this item, concerning each exercise of stock options (or tandem SARs) and freestanding SARs during the last completed fiscal year by each of the named executive officers and the fiscal year-end value of unexercised options and SARs, shall be provided on an aggregated basis in the tabular format specified below:

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR AND FY-END OPTION/SAR VALUES

Name	Shares acquired on exercise (#)	Value realized (\$)	Number of unexercised options/SARs at FY-end (#) exercisable/unexercisable	Value of unexercised in-the-money options/SARs at FY-end (\$) exercisable/unexercisable
(a)	(b)	(c)	(d)	(e)
CEO				
A				
B				
C				
D				

(2) The table shall include:

(i) The name of the executive officer (column (a));

(ii) The number of shares received upon exercise, or, if no shares were received, the number of securities with respect to which the options or SARs were exercised (column (b));

(iii) The aggregate dollar value realized upon exercise (column (c));

(iv) The total number of unexercised options and SARs held at the end of the last completed fiscal year, separately identifying the exercisable and unexercisable options and SARs (column (d)); and

(v) The aggregate dollar value of in-the-money, unexercised options and SARs held at the end of the fiscal year, separately identifying the exercisable

and unexercisable options and SARs (column (e)).

Instructions to Item 402(d)(2)

1. Options or freestanding SARs are in-the-money if the fair market value of the underlying securities exceeds the exercise or base price of the option or SAR. The dollar values in columns (c) and (e) are calculated by determining the difference between the fair market value of the securities underlying the options or SARs and the exercise or base

price of the options or SARs at exercise or fiscal year-end, respectively.

2. In calculating the dollar value realized upon exercise (column (c)), the value of any related payment or other consideration provided (or to be provided) by the registrant to or on behalf of a named executive officer, whether in payment of the exercise price or

related taxes, shall not be included.

Payments by the registrant in reimbursement of tax obligations incurred by a named executive officer are required to be disclosed in accordance with paragraph (b)(2)(iii)(C)(4) of this item.

(e) *Long-Term Incentive Plan ("LTIP") awards table.* (1) The information

specified in paragraph (e)(2) of this item, regarding each award made to a named executive officer in the last completed fiscal year under any LTIP, shall be provided in the tabular format specified below:

LONG-TERM INCENTIVE PLANS—AWARDS IN LAST FISCAL YEAR

(a) Name	(b) Number of shares, units or other rights (#)	(c) Performance or other period until maturation or payout	Estimated Future Payouts under Non-Stock Price-Based Plans		
			(d) Threshold (\$ or #)	(e) Target (\$ or #)	(f) Maximum (\$ or #)
CEO A B C D					

(2) The Table shall include: (i) The name of the executive officer (column (a));

(ii) The number of shares, units or other rights awarded under any LTIP, and, if applicable, the number of shares underlying any such unit or right (column (b));

(iii) The performance or other time period until payout or maturation of the award (column (c)); and

(iv) For plans not based on stock price, the dollar value of the estimated payout or range of estimated payouts under the award (threshold, target and maximum amount), whether such award is denominated in stock or cash (columns (d) through (f)).

Instructions to Item 402(e)

1. For purposes of this paragraph, the term "long-term incentive plan" or "LTIP" shall be defined in accordance with paragraph (a)(6)(iii) of this item.

2. Describe in a footnote or in narrative text accompanying this table the material terms of any award, including a general description of the formula or criteria to be applied in determining the amounts payable. Registrants are not required to disclose any factor, criterion or performance-related or other condition to payout or maturation of a particular award that involves confidential commercial or business information, disclosure of which would adversely affect the registrant's competitive position.

3. Separate disclosure shall be provided in the Table for each award made to a named executive officer, accompanied by the information specified in Instruction 2 to this paragraph. If awards are made to a named executive officer during the fiscal year under more than one plan, identify the particular plan under which each such award was made.

4. For column (d), "threshold" refers to the minimum amount payable for a certain level of performance under the plan. For column

(e), "target" refers to the amount payable if the specified performance target(s) are reached. For column (f), "maximum" refers to the maximum payout possible under the plan.

5. In column (e), registrants must provide a representative amount based on the previous fiscal year's performance if the target award is not determinable.

6. A tandem grant of two instruments, only one of which is pursuant to a LTIP, need be reported only in the table applicable to the other instrument. For example, an option granted in tandem with a performance share would be reported only as an option grant, with the tandem feature noted.

(f) *Compensation of directors—(1) Standard arrangements.* Describe any standard arrangements, stating amounts, pursuant to which directors of the registrant are compensated for any services provided as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* Describe any other arrangements pursuant to which any director of the registrant was compensated during the registrant's last completed fiscal year for any service provided as a director, stating the amount paid and the name of the director.

Instruction to Item 402(f)(2)

The information required by paragraph (f)(2) of this item shall include any arrangement, including consulting contracts, entered into in consideration of the director's service on the board. The material terms of any such arrangement shall be included.

(g) *Employment contracts and termination of employment and change-in-control arrangements.* Describe the terms and conditions of each of the following contracts or arrangements:

(1) Any employment contract between the registrant and a named executive officer; and

(2) Any compensatory plan or arrangement, including payments to be received from the registrant, with respect to a named executive officer, if such plan or arrangement results or will result from the resignation, retirement or any other termination of such executive officer's employment with the registrant and its subsidiaries or from a change-in-control of the registrant or a change in the named executive officer's responsibilities following a change-in-control and the amount involved, including all periodic payments or installments, exceeds \$100,000.

(h) *Report on repricing of options/SARs.* (1) If at any time during the last completed fiscal year, the registrant, while a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act [15 U.S.C. 78m(a), 78o(d)], has adjusted or amended the exercise price of stock options or SARs previously awarded to any of the named executive officers, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), the registrant shall provide the information specified in paragraph (h)(2) of this item.

(2) The compensation committee or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors shall explain in reasonable detail any such repricing of options and or SARs held by a named executive officer in the last completed fiscal year, as well as the basis for each such repricing.

Instructions to Item 402(h)

1. A replacement grant is any grant of options or SARs reasonably related to any prior or potential option or SAR cancellation, whether by an exchange of existing options or SARs for options or SARs with new terms; the grant of new options or SARs in tandem with previously granted options or SARs that will operate to cancel the previously granted options or SARs upon exercise; repricing of previously granted options or SARs; or otherwise. If a corresponding original grant was canceled in a prior year, information about such grant nevertheless must be disclosed pursuant to this paragraph.

2. If the replacement grant is not made at the current market price, describe the terms of the grant in a footnote or accompanying textual narrative.

3. This paragraph shall not apply to any repricing occurring through the operation of:

- a. A plan formula or mechanism that results in the periodic adjustment of the option or SAR exercise or base price;
- b. A plan antidilution provision; or
- c. A recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

3. By amending § 228.403 by revising paragraph (b) above the table to read as follows:

§ 228.403 (Item 403) Security ownership of certain beneficial owners and management.

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(2) (§ 228.402(a)(2)), and directors and executive officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 240.13d-3(d)(1) of this chapter.

4. By amending § 228.601 to revise paragraph (b)(10)(ii)(A) to read as follows:

§ 228.601 (Item 601) Exhibits.

- (b) *Description of exhibits.* * * *
- (10) *Material contracts.* * * *
- (ii)(A) Any management contract or any compensatory plan, contract or arrangement, including but not limited to

plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the named executive officers of the registrant as defined by Item 402(a)(2) (§ 228.402(a)(2)) participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

5. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

6. By revising § 229.402 to read as follows:

§ 229.402 (Item 402) Executive compensation.

(a) *General*—(1) *Treatment of specific types of issuers*—(i) *Small business issuers.* A registrant that qualifies as "small business issuer," as defined by Item 10(a)(1) of Regulation S-B [17 CFR 228.10(a)(1)], will be deemed to comply with this item if it provides the information required by paragraph (b) (Summary Compensation Table), paragraphs (c)(1) and (c)(2)(i)-(v) (Option/SAR Grants Table), paragraph (d) (Aggregated Option/SAR Exercise and Fiscal Year-End Option/SAR Value Table), paragraph (e) (Long-Term Incentive Plan Awards Table), paragraph (g) (Compensation of Directors), paragraph (h) (Employment Contracts, Termination of Employment and Change in Control Arrangements) and paragraph (i) (1) and (2) (Report on Repricing of Options/SARs) of this item.

(ii) *Foreign private issuers.* A foreign private issuer will be deemed to comply with this item if it provides the information required by Items 11 and 12 of Form 20-F [17 CFR 249.220f], with more detailed information provided if otherwise made publicly available.

(2) *All compensation covered.* This item requires clear, concise and understandable disclosure of all plan

and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(3) of this item, and directors covered by paragraph (g) of this item by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specified in this item. Except as provided by paragraph (a)(5) of this item, all such compensation shall be reported pursuant to this item, even if also called for by another requirement, including transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to any such named executive officer or director. No item reported as compensation for one fiscal year need be reported as compensation for a subsequent fiscal year.

(3) *Persons covered.* Disclosure shall be provided pursuant to this item for each of the following (the "named executive officers"):

(i) The registrant's Chief Executive Officer or any individual acting in a similar capacity ("CEO") at the end of the last completed fiscal year, regardless of compensation level; and

(ii) The registrant's four most highly compensated executive officers other than the CEO who were serving as executive officers at the end of the last completed fiscal year.

Instructions to Item 402(a)(3)

1. *Determination of Most Highly Compensated Executive Officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total annual salary and bonus for the last completed fiscal year (as required to be disclosed pursuant to paragraph (b)(2)(iii) (A) and (B) of this item), but including the dollar value of salary or bonus amounts forgone pursuant to Instruction 3 to paragraph (b)(2)(iii) (A) and (B) of this item: *Provided, however,* That no disclosure need be provided for any executive officer, other than the CEO, whose total annual salary and bonus, as so determined, does not exceed \$100,000.

2. *Inclusion of Executive Officer of Subsidiary.* It may be appropriate in certain circumstances for a registrant to include an executive officer of a subsidiary in the disclosure required by this item. See Rule 3b-7 under the Exchange Act [17 CFR 240.3b-7].

3. *Exclusion of Executive Officer due to Unusual or Overseas Compensation.* It may be appropriate in limited circumstances for a registrant not to include in the disclosure required by this item an individual, other than its CEO, who is one of the registrant's most highly compensated executive officers. Among the factors that should be considered in determining not to name an individual are: (a) the distribution or accrual of an unusually large amount of cash compensation (such as

a bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; and (b) the payment of amounts of cash compensation relating to overseas assignments that may be attributed predominantly to such assignments.

(4) *Information for full fiscal year.* If the CEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the CEO) served as an executive officer of the registrant (whether or not in the same position) during any part of a fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(5) *Transactions with third parties reported under item 404.* This item includes transactions between the registrant and a third party where the primary purpose of the transaction is to furnish compensation to a named executive officer. No information need be given in response to any paragraph of this item, other than paragraph (j), as to any such third-party transaction if the transaction has been reported in response to Item 404 of Regulation S-K (§ 229.404).

(6) *Omission of table or column.* A table or column may be omitted, if there has been no compensation awarded to, earned by or paid to any of the named executives required to be reported in that table or column in any fiscal year covered by that table.

(7) *Definitions.* For purposes of this item:

(i) The term *stock appreciation rights (SARs)* refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the registrant or a named executive officer.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock or restricted stock units, phantom stock, stock options, SARs, stock options in tandem with SARs, warrants, convertible securities, performance units and performance shares, and similar instruments. A plan may be applicable to one person. Registrants may omit information regarding group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

(iii) The term *long-term incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a period longer than one fiscal year, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant's stock price, or any other measure, but excluding restricted stock, stock option and SAR plans.

(8) *Location of specified information.* The information required by paragraphs (i), (k) and (l) of this item need not be provided in any filings other than a registrant proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(9) *Liability for specified information.* The information required by paragraphs (k) and (l) of this item shall not be deemed to be "soliciting material" or to be "filed" with the Commission or subject to Regulations 14A or 14C [17 CFR 240.14a-1 *et seq.* or 240.14c-1 *et seq.*], other than as provided in this item, or to the liabilities of section 18 of the Exchange Act [15 U.S.C. 78r], except to the extent that the registrant specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act.

(b) *Summary Compensation Table.* (1) *General.* The information specified in paragraph (b)(2) of this item, concerning the compensation of the named executive officers for each of the registrant's last three completed fiscal years, shall be provided in a Summary Compensation Table, in the tabular format specified below.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Annual compensation			Long term compensation			All other compensation (\$)
		Salary (\$)	Bonus (\$)	Other annual compensation (\$)	Awards		Payouts	
					Restricted stock award(s) (\$)	Options/SARs (#)	LTIP payouts (\$)	
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
CEO								
A								
B								
C								
D								

(2) The Table shall include:
(i) The name and principal position of the executive officer (column (a));
(ii) Fiscal year covered (column (b));
(iii) Annual compensation (columns (c), (d) and (e)), including:

(A) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(B) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d)); and

Instructions to Item 402(b)(2)(iii) (A) and (B)

1. Amounts deferred at the election of a named executive officer, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)], or otherwise, shall be included in the salary

column (column (c)) or bonus column (column (d)), as appropriate, for the fiscal year in which earned. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, that fact must be disclosed in a footnote and such amount must be disclosed in the subsequent fiscal year in the appropriate column for the fiscal year in which earned.

2. For stock or any other form of non-cash compensation, disclose the fair market value

at the time the compensation is awarded, earned or paid.

3. Registrants need not include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer pursuant to a registrant program under which stock, stock-based or other forms of non-cash compensation may be received by a named executive in lieu of a portion of annual compensation earned in a covered fiscal year. However, the receipt of any such form of non-cash compensation in lieu of salary or bonus earned for a covered fiscal year must be disclosed in the appropriate column of the Table corresponding to that fiscal year (i.e., restricted stock awards (column (f)); options or SARs (column (g)); all other compensation (column (i)), or, if made pursuant to a long-term incentive plan and therefore not reportable at grant in the Summary Compensation Table, a footnote must be added to the salary or bonus column so disclosing and referring to the Long-Term Incentive Plan Table (required by paragraph (e) of this item) where the award is reported.

(C) The dollar value of other annual compensation not properly categorized as salary or bonus, as follows (column (e)):

(1) Perquisites and other personal benefits, securities or property, unless the aggregate amount of such compensation is the lesser of either \$50,000 or 10% of the total of annual salary and bonus reported for the named executive officer in columns (c) and (d);

(2) Above-market or preferential earnings on restricted stock, options, SARs or deferred compensation paid during the fiscal year or payable during that period but deferred at the election of the named executive officer;

(3) Earnings on long-term incentive plan compensation paid during the fiscal year or payable during that period but deferred at the election of the named executive officer;

(4) Amounts reimbursed during the fiscal year for the payment of taxes; and

(5) The dollar value of the difference between the price paid by a named executive officer for any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise), and the fair market value of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant.

Instructions to Item 402(b)(2)(iii)(C)

1. Each perquisite or other personal benefit exceeding 25% of the total perquisites and other personal benefits reported for a named executive officer must be identified by type and amount in a footnote or accompanying narrative discussion to column (e).

2. Perquisites and other personal benefits shall be valued on the basis of the aggregate

incremental cost to the registrant and its subsidiaries.

3. Interest on deferred or long-term compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, [26 U.S.C. 1274(d)]) at the rate that corresponds most closely to the rate under the registrant's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate.

4. Dividends (and dividend equivalents) on restricted stock, options, SARs or deferred compensation denominated in stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the registrant's common stock. Only the preferential portion of the dividends or equivalents must be included.

(iv) Long-term compensation (columns (f), (g) and (h)), including:

(A) The dollar value (net of any consideration paid by the named executive officer) of any award of restricted stock, including share units (calculated by multiplying the closing market price of the registrant's unrestricted stock on the date of grant by the number of shares awarded) (column (f));

(B) The sum of the number of stock options granted, with or without tandem SARs, and the number of freestanding SARs (column (g)); and

(C) The dollar value of all payouts pursuant to long-term incentive plans ("LTIPs") as defined in paragraph (a)(7)(iii) of this item (column (h)).

Instructions to Item 402(b)(2)(iv)

1. Awards of restricted stock that are subject to performance-based conditions on vesting, in addition to lapse of time and/or continued service with the registrant or a subsidiary, may be reported as LTIP awards pursuant to paragraph (e) of this item instead of in column (f). If this approach is selected, once the restricted stock vests, it must be reported as an LTIP payout in column (h).

2. The registrant shall, in a footnote to column (f), disclose:

a. The number and value of the aggregate restricted stock holdings at the end of the last completed fiscal year. Value shall be calculated as specified in paragraph (b)(2)(iv)(A) of this item;

b. For any restricted stock award that will vest, in whole or in part, in under three years from the date of grant, the total number of shares awarded and the vesting schedule; and

c. Whether dividends will be paid on the restricted stock reported in the column.

3. If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of stock options or freestanding SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), the registrant shall include the number of options or freestanding SARs so repriced as Stock Options/SARs granted and required to be reported in column (g).

4. If any specified performance target, goal or condition to payout was waived with respect to any amount included in LTIP payouts reported in column (h), the registrant shall so state in a footnote to column (h).

(v) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Summary Compensation Table (column (i)). Any compensation reported in this column for the last completed fiscal year shall be identified and quantified in a footnote. Such compensation shall include, but not be limited to:

(A) The amount paid, payable or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(1) The resignation, retirement or any other termination of such executive officer's employment with the registrant and its subsidiaries; or

(2) A change in control of the registrant or a change in the executive officer's responsibilities following such a change in control;

(B) The dollar value of above-market or preferential amounts earned on restricted stock, options, SARs or deferred compensation during the fiscal year, or calculated with respect to that period, except that if such amounts are paid during the period, or payable during the period but deferred at the election of a named executive officer, this information shall be reported as Other Annual Compensation in column (e). See Instructions 3 and 4 to paragraph 402(b)(2)(iii)(C) of this item;

(C) The dollar value of amounts earned on long-term incentive plan compensation during the fiscal year, or calculated with respect to that period, except that if such amounts are paid during that period, or payable during that period at the election of the named executive officer, this information shall be reported as Other Annual Compensation in column (e);

(D) Annual registrant contributions or other allocations to vested and unvested defined contribution plans; and

(E) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year

with respect to term life insurance for the benefit of a named executive officer, and, if there is any arrangement or understanding, whether formal or informal, that such executive officer has or will receive or be allocated an interest in any cash surrender value under the insurance policy, either:

(1) The full dollar value of the remainder of the premiums paid by, or on behalf of, the registrant; or

(2) If the premiums will be refunded to the registrant on termination of the policy, the dollar value of the benefit to the executive officer of the remainder of the premium paid by, or on behalf of, the registrant during the fiscal year. The benefit shall be determined for the period, projected on an actuarial basis,

between payment of the premium and the refund.

Instructions to Item 402(b)(2)(v)

1. LTIP awards and amounts received on exercise of options and SARs need not be reported as All Other Compensation in column (i).

2. Information relating to defined benefit and actuarial plans should not be reported pursuant to paragraph (b) of this item, but instead should be reported pursuant to paragraph (f) of this item.

3. Where alternative methods of reporting are available under paragraph (b)(2)(v)(E) of this item, the same method should be used for each of the named executive officers. If the registrant chooses to change methods from one year to the next, that fact, and the reason therefor, should be disclosed in a footnote to column (i).

Instruction to Item 402(b)

Information with respect to fiscal years prior to the last completed fiscal year will not be required if the registrant was not a reporting company pursuant to Section 13(a) or 15(d) of the Exchange Act at any time during that year, except that the registrant will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

(c) *Option/SAR Grants Table.* (1) The information specified in paragraph (c)(2) of this item, concerning individual grants of stock options (whether or not in tandem with SARs), and freestanding SARs made during the last completed fiscal year to each of the named executive officers shall be provided in the tabular format specified below:

OPTION/SAR GRANTS IN LAST FISCAL YEAR

Individual Grants					Potential realizable value at assumed annual rates of stock price appreciation for option term		Alternative to (f) and (g): Grant date value
Name	Options/SARs Granted (#)	Percent of total options/SARs granted to employees in fiscal year	Exercise or base price (\$/Sh)	Expiration date	5% (\$)	10% (\$)	Grant date present value \$
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(f)
CEO.....							
A.....							
B.....							
C.....							
D.....							

(2) The Table shall include, with respect to each grant:

(i) The name of the executive officer (column (a));

(ii) The number of options and SARs granted (column (b));

(iii) The percent the grant represents of total options and SARs granted to employees during the fiscal year (column (c));

(iv) The per-share exercise or base price of the options or SARs granted (column (d)). If such exercise or base price is less than the market price of the underlying security on the date of grant, a separate, adjoining column shall be added showing market price on the date of grant;

(v) The expiration date of the options or SARs (column (e)); and

(vi) Either (A) the potential realizable value of each grant of options or freestanding SARs or (B) the present value of each grant, as follows:

(A) The potential realizable value of each grant of options or freestanding SARs, assuming that the market price of the underlying security appreciates in value from the date of grant to the end

of the option or SAR term, at the following annualized rates:

(1) 5% (column (f));

(2) 10% (column (g)); and

(3) If the exercise or base price was below the market price of the underlying security at the date of grant, provide an additional column labeled 0%, to show the value at grant-date market price; or

(B) The present value of the grant at the date of grant, under any option pricing model (alternative column (f)).

Instructions to Item 402(c)

1. If more than one grant of options and/or freestanding SARs was made to a named executive officer during the last completed fiscal year, a separate line should be used to provide disclosure of each such grant. However, multiple grants during a single fiscal year may be aggregated where each grant was made at the same exercise and/or base price and has the same expiration date, and the same performance vesting thresholds, if any. A single grant consisting of options and/or freestanding SARs shall be reported as separate grants with respect to each tranche with a different exercise and/or base price, performance vesting threshold, or expiration date.

2. Options or freestanding SARs granted in connection with an option repricing

transaction shall be reported in this table. See Instruction 3 to paragraph (b)(2)(iv) of this item.

3. Any material term of the grant, including but not limited to the date of exercisability, the number of SARs, performance units or other instruments granted in tandem with options, a performance-based condition to exercisability, a reload feature, or a tax-reimbursement feature, shall be footnoted.

4. If the exercise or base price is adjustable over the term of any option or freestanding SAR in accordance with any prescribed standard or formula, including but not limited to an index or premium price provision, describe the following, either by footnote to column (c) or in narrative accompanying the Table: (a) the standard or formula; and (b) any constant assumption made by the registrant regarding any adjustment to the exercise price in calculating the potential option or SAR value.

5. If any provision of a grant (other than an antidilution provision) could cause the exercise price to be lowered, registrants must clearly and fully disclose these provisions and their potential consequences either by a footnote or accompanying textual narrative.

6. In determining the grant-date market or base price of the security underlying options or freestanding SARs, the registrant may use either the closing market price per share of

the security, or any other formula prescribed for the security.

7. The potential realizable dollar value of a grant (columns (f) and (g)) shall be the product of:

- (a) The difference between:
 - (i) The product of the per-share market price at the time of the grant and the sum of 1 plus the adjusted stock price appreciation rate (the assumed rate of appreciation compounded annually over the term of the option or SAR); and
 - (ii) The per-share exercise price of the option or SAR; and
- (b) The number of securities underlying the grant at fiscal year-end.

8. Registrants may add one or more separate columns using the formula prescribed in Instruction 7 to paragraph (c) of this item, to reflect the following:

a. The registrant's historic rate of appreciation over a period equivalent to the term of such options and/or SARs;

b. 0% appreciation, where the exercise or base price was equal to or greater than the market price of the underlying securities on the date of grant; and

c. N% appreciation, the percentage appreciation by which the exercise or base price exceeded the market price at grant. Where the grant included multiple tranches with exercise or base prices exceeding the market price of the underlying security by varying degrees, include an additional column for each additional tranche.

9. Where the registrant chooses to use the grant-date valuation alternative specified in paragraph (c)(2)(vi)(B) of this item, the valuation should be footnoted to describe the valuation method used. Where the registrant has used a variation of the Black-Scholes

option pricing model, the description may be limited to a simple indication of the use of such pricing model. In the event another valuation method were to be used, the registrant would be required to describe the methodology as well as any material assumptions.

(d) *Aggregated option/SAR exercises and fiscal year-end option/SAR value table.* (1) The information specified in paragraph (d)(2) of this item, concerning each exercise of stock options (or tandem SARs) and freestanding SARs during the last completed fiscal year by each of the named executive officers and the fiscal year-end value of unexercised options and SARs, shall be provided on an aggregated basis in the tabular format specified below:

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR AND FY-END OPTION/SAR VALUES

Name	Shares acquired on exercise (#)	Value Realized (\$)	Number of unexercised options/SARs at fiscal year-end (#)	Value of unexercised in-the-money options/SARs at fiscal year-end (\$)
			Exercisable/unexercisable	Exercisable/unexercisable
(a)	(b)	(c)	(d)	(e)
CEO				
A				
B				
C				
D				

(2) The table shall include:

(i) The name of the executive officer (column (a));

(ii) The number of shares received upon exercise, or, if no shares were received, the number of securities with respect to which the options or SARs were exercised (column (b));

(iii) The aggregate dollar value realized upon exercise (column (c));

(iv) The total number of unexercised options and SARs held at the end of the last completed fiscal year, separately identifying the exercisable and unexercisable options and SARs (column (d)); and

(v) The aggregate dollar value of in-the-money, unexercised options and

SARs held at the end of the fiscal year, separately identifying the exercisable and unexercisable options and SARs (column (e)).

Instructions to Item 402(d)(2)

1. Options or freestanding SARs are in-the-money if the fair market value of the underlying securities exceeds the exercise or base price of the option or SAR. The dollar values in columns (c) and (e) are calculated by determining the difference between the fair market value of the securities underlying the options or SARs and the exercise or base price of the options or SARs at exercise or fiscal year-end, respectively.

2. In calculating the dollar value realized upon exercise (column (c)), the value of any related payment or other consideration

provided (or to be provided) by the registrant to or on behalf of a named executive officer, whether in payment of the exercise price or related taxes, shall not be included. Payments by the registrant in reimbursement of tax obligations incurred by a named executive officer are required to be disclosed in accordance with paragraph (b)(2)(iii)(C)(4) of this item.

(e) *Long-Term Incentive Plan ("LTIP") awards table.* (1) The information specified in paragraph (e)(2) of this item, regarding each award made to a named executive officer in the last completed fiscal year under any LTIP, shall be provided in the tabular format specified below:

LONG-TERM INCENTIVE PLANS—AWARDS IN LAST FISCAL YEAR

Name	Number of shares, units or other rights (#)	Performance or other period until maturation or payout	Estimated future payouts under non-stock price-based plans		
			Threshold (\$ or #)	Target (\$ or #)	Maximum (\$ or #)
(a)	(b)	(c)	(d)	(e)	(f)
CEO					
A					
B					
C					
D					

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The number of shares, units or other rights awarded under any LTIP, and, if applicable, the number of shares underlying any such unit or right (column (b));

(iii) The performance or other time period until payout or maturation of the award (column (c)); and

(iv) For plans not based on stock price, the dollar value of the estimated payout or range of estimated payouts under the award (threshold, target and maximum amount), whether such award is denominated in stock or cash (columns (d) through (f)).

Instructions to Item 402(e)

1. For purposes of this paragraph, the term "long-term incentive plan" or "LTIP" shall be defined in accordance with paragraph (a)(7)(iii) of this item.

2. Describe in a footnote or in narrative text accompanying this table the material

terms of any award, including a general description of the formula or criteria to be applied in determining the amounts payable. Registrants are not required to disclose any factor, criterion or performance-related or other condition to payout or maturation of a particular award that involves confidential commercial or business information, disclosure of which would adversely affect the registrant's competitive position.

3. Separate disclosure shall be provided in the Table for each award made to a named executive officer, accompanied by the information specified in Instruction 2 to this paragraph. If awards are made to a named executive officer during the fiscal year under more than one plan, identify the particular plan under which each such award was made.

4. For column (d), "threshold" refers to the minimum amount payable for a certain level of performance under the plan. For column (e), "target" refers to the amount payable if the specified performance target(s) are reached. For column (f), "maximum" refers to the maximum payout possible under the plan.

5. In column (e), registrants must provide a representative amount based on the previous

fiscal year's performance if the target award is not determinable.

6. A tandem grant of two instruments, only one of which is pursuant to a LTIP, need be reported only in the table applicable to the other instrument. For example, an option granted in tandem with a performance share would be reported only as an option grant, with the tandem feature noted.

(f) *Defined benefit or actuarial plan disclosure*—(1) *Pension plan table.* (i) For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide a separate Pension Plan Table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications in the format specified below.

PENSION PLAN TABLE

Remuneration	Years of service				
	15	20	25	30	35
125,000.....					
150,000.....					
175,000.....					
200,000.....					
225,000.....					
250,000.....					
300,000.....					
400,000.....					
450,000.....					
500,000.....					

(ii) Immediately following the Table, the registrant shall disclose:

(A) The compensation covered by the plan(s), including the relationship of such covered compensation to the compensation reported in the Summary Compensation Table required by paragraph (b)(2) of this item, and state the current compensation covered by the plan for any named executive officer whose covered compensation differs substantially (by more than 10%) from

that set forth in the Summary Compensation Table;

(B) The estimated credited years of service for each of the named executive officers; and

(C) A statement as to the basis upon which benefits are computed (e.g., straight-life annuity amounts), and whether or not the benefits listed in the Pension Plan Table are subject to any deduction for Social Security or other offset amounts.

(2) *Alternative pension plan disclosure.* For any defined benefit or actuarial plan under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, the registrant shall state in narrative form:

(i) The formula by which benefits are determined; and

(ii) The estimated annual benefits payable upon retirement at normal retirement age for each of the named executive officers.

Instructions to Item 402(f)

1. *Pension Levels.* Compensation set forth in the Pension Plan Table pursuant to paragraph (f)(1)(i) of this item shall allow for reasonable increases in existing compensation levels; alternatively, registrants may present as the highest compensation level in the Pension Plan Table an amount equal to 120% of the amount of covered compensation of the most highly compensated individual named in the Summary Compensation Table required by paragraph (b)(2) of this item.

2. *Normal Retirement Age.* The term "normal retirement age" means normal retirement age as defined in a pension or similar plan or, if not defined therein, the earliest time at which a participant may retire without any benefit reduction due to age.

(g) *Compensation of Directors—(1) Standard arrangements.* Describe any standard arrangements, stating amounts, pursuant to which directors of the registrant are compensated for any services provided as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* Describe any other arrangements pursuant to which any director of the registrant was compensated during the registrant's last completed fiscal year for any service provided as a director, stating the

amount paid and the name of the director.

Instruction to Item 402(g)(2)

The information required by paragraph (g)(2) of this item shall include any arrangement, including consulting contracts, entered into in consideration of the director's service on the board. The material terms of any such arrangement shall be included.

(h) *Employment contracts and termination of employment and change-in-control arrangements.* Describe the terms and conditions of each of the following contracts or arrangements:

(1) Any employment contract between the registrant and a named executive officer; and

(2) Any compensatory plan or arrangement, including payments to be received from the registrant, with respect to a named executive officer, if such plan or arrangement results or will result from the resignation, retirement or any other termination of such executive officer's employment with the registrant and its subsidiaries or from a change-in-control of the registrant or a change in the named executive officer's responsibilities following a change-in-control and the amount involved, including all periodic payments or installments, exceeds \$100,000.

(i) *Report on repricing of options/SARs.* (1) If at any time during the last completed fiscal year, the registrant, while a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act [15 U.S.C. 78m(a), 78o(d)], has adjusted or amended the exercise price of stock options or SARs previously awarded to any of the named executive officers, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), the registrant shall provide the information specified in paragraphs (i)(2) and (i)(3) of this item.

(2) The compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) shall explain in reasonable detail any such repricing of options and/or SARs held by a named executive officer in the last completed fiscal year, as well as the basis for each such repricing.

(3)(i) The information specified in paragraph (i)(3)(ii) of this item, concerning all such repricings of options and SARs held by any executive officer during the last ten completed fiscal years, shall be provided in the tabular format specified below:

TEN-YEAR OPTION/SAR REPRICINGS

Name	Date	Number of options/SARs repriced or amended (#)	Market price of stock at time of repricing or amendment (\$)	Exercise price at time of repricing or amendment (\$)	New exercise price (\$)	Length of original option term remaining at date of repricing or amendment
(a)	(b)	(c)	(d)	(e)	(f)	(g)

(ii) The Table shall include, with respect to each repricing:

(A) The name and position of the executive officer (column (a));

(B) The date of each repricing (column (b));

(C) The number of replacement or amended options or SARs (column (c));

(D) The per-share market price of the underlying security at the time of repricing (column (d));

(E) The original exercise price or base price of the cancelled or amended option or SAR (column (e));

(F) The per-share exercise price or base price of the replacement option or SAR (column (f)); and

(G) The amount of time remaining before the replaced or amended option or SAR would have expired (column (g)).

Instructions to Item 402(i)

1. The required report shall be made over the name of each member of the registrant's compensation committee, or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors.

2. A replacement grant is any grant of options or SARs reasonably related to any prior or potential option or SAR cancellation, whether by an exchange of existing options or SARs for options or SARs with new terms; the grant of new options or SARs in tandem with previously granted options or SARs that will operate to cancel the previously granted options or SARs upon exercise; repricing of previously granted options or SARs; or otherwise. If a corresponding original grant was canceled in a prior year, information about such grant nevertheless must be disclosed pursuant to this paragraph.

3. If the replacement grant is not made at the current market price, describe the terms

of the grant in a footnote or accompanying textual narrative.

4. This paragraph shall not apply to any repricing occurring through the operation of:

- a. A plan formula or mechanism that results in the periodic adjustment of the option or SAR exercise or base price;
- b. A plan antidilution provision; or
- c. A recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

5. Information required by paragraph (i)(3) of this item shall not be provided for any repricings effected before the registrant became a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act.

(j) *Additional information with respect to Compensation Committee Interlocks and Insider Participation in compensation decisions.* Under the caption "Compensation Committee Interlocks and Insider Participation,"

(1) The registrant shall identify each person who served as a member of the compensation committee of the registrant's board of directors (or board committee performing equivalent functions) during the last completed fiscal year, indicating each committee member who:

(i) Was, during the fiscal year, an officer or employee of the registrant or any of its subsidiaries;

(ii) Was formerly an officer of the registrant or any of its subsidiaries; or

(iii) Had any relationship requiring disclosure by the registrant under any paragraph of Item 404 of Regulations S-K (§ 229.404). In this event, the disclosure required by Item 404 shall accompany such identification.

(2) If the registrant has no compensation committee (or other board committee performing equivalent functions), the registrant shall identify each officer and employee of the registrant or any of its subsidiaries, and any former officer of the registrant or any of its subsidiaries, who, during the last completed fiscal year, participated in deliberations of the registrant's board of directors concerning executive officer compensation.

(3) The registrant shall describe any of the following relationships that existed during the last completed fiscal year:

(i) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant;

(ii) An executive officer of the registrant served as a director of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant; and

(iii) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served as a director of the registrant.

(4) Disclosure required under paragraph (j)(3) of this item regarding any compensation committee member or other director of the registrant who also

served as an executive officer of another entity shall be accompanied by the disclosure called for by Item 404 (§ 229.404) with respect to that person.

Instruction to Item 402(j)

For purposes of this paragraph, the term "entity" shall not include an entity exempt from tax under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)].

(k) *Board compensation committee report on executive compensation.* (1) Disclosure of the compensation committee's compensation policies applicable to the registrant's executive officers (including the named executive officers), including the specific relationship of corporate performance to executive compensation, is required with respect to compensation reported for the last completed fiscal year.

(2) Discussion is required of the compensation committee's bases for the CEO's compensation reported for the last completed fiscal year, including the factors and criteria upon which the CEO's compensation was based. The committee shall include a specific discussion of the relationship of the registrant's performance to the CEO's compensation for the last completed fiscal year, describing each measure of the registrant's performance, whether qualitative or quantitative, on which the CEO's compensation was based.

(3) The required disclosure shall be made over the name of each member of the registrant's compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, entire board of directors). If the board of directors modified or rejected in any material way any action or recommendation by such committee with respect to such decisions in the last completed fiscal year, the disclosure must so indicate and explain the reasons for the board's actions, and be made over the names of all members of the board.

Instructions to Item 402(k)

1. Boilerplate language should be avoided in describing factors and criteria underlying awards or payments of executive compensation in the statement required.

2. Registrants are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the committee (or board), or any factors or criteria involving confidential commercial or business information, the disclosure of which would have an adverse effect on the registrant.

(l) *Performance graph.* (1) Provide a line graph comparing the yearly percentage change in the registrant's cumulative total shareholder return on a class of common stock registered under section 12 of the Exchange Act (as

measured by dividing (i) the sum of (A) the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and (B) the difference between the registrant's share price at the end and the beginning of the measurement period; by (ii) the share price at the beginning of the measurement period) with

(i) the cumulative total return of a broad equity market index assuming reinvestment of dividends, that includes companies whose equity securities are traded on the same exchange or NASDAQ market or are of comparable market capitalization; *Provided, however,* That if the registrant is a company within the Standard & Poor's 500 Stock Index, the registrant must use that index; and

(ii) The cumulative total return, assuming reinvestment of dividends, of: (A) A published industry or line-of-business index;

(B) Peer issuer(s) selected in good faith. If the registrant does not select its peer issuer(s) on an industry or line-of-business basis, the registrant shall disclose the basis for its selection; or

(C) Issuer(s) with similar market capitalization(s), but only if the registrant does not use a published industry or line-of-business index and does not believe it can reasonably identify a peer group. If the registrant uses this alternative, the graph shall be accompanied by a statement of the reasons for this selection.

(2) For purposes of paragraph (l)(1) of this item, the term "measurement period" shall be the period beginning at the "measurement point" established by the market close on the last trading day before the beginning of the registrant's fifth preceding fiscal year, through and including the end of the registrant's last completed fiscal year. If the class of securities has been registered under section 12 of the Exchange Act for a shorter period of time, the period covered by the comparison may correspond to that time period.

(3) For purposes of paragraph (l)(1)(ii)(A) of this item, the term "published industry or line-of-business index" means any index that is prepared by a party other than the registrant or an affiliate and is accessible to the registrant's security holders; provided, however, that registrants may use an index prepared by the registrant or affiliate if such index is widely recognized and used.

(4) If the registrant selects a different index from an index used for the immediately preceding fiscal year, explain the reason(s) for this change and also compare the registrant's total return

with that of both the newly selected index and the index used in the immediately preceding fiscal year.

Instructions to Item 402(f)

1. In preparing the required graphic comparisons, the registrant should:

a. Use, to the extent feasible, comparable methods of presentation and assumptions for the total return calculations required by paragraph (f)(1) of this item; *Provided, however,* That if the registrant constructs its own peer group index under paragraph (f)(1)(ii)(B), the same methodology must be used in calculating both the registrant's total return and that on the peer group index; and

b. Assume the reinvestment of dividends into additional shares of the same class of equity securities at the frequency with which dividends are paid on such securities during the applicable fiscal year.

2. In constructing the graph:

(a) The closing price at the measurement point should be converted into the base amount, with cumulative returns for each subsequent fiscal year measured as a change from that base; and

(b) Each fiscal year should be plotted with points showing the cumulative total return as of that point.

3. The registrant is required to present information for the registrant's last five fiscal years, and may choose to graph a longer period; but the measurement point, however, shall remain the same.

4. Registrants may include comparisons using performance measures in addition to total return, such as return on average common shareholders' equity, so long as the registrant's compensation committee (or other board committee performing equivalent functions or in the absence of any such committee the entire board of directors) describes the link between that measure and the level of executive compensation in the statement required by paragraph (k) of this Item.

7. By amending § 229.403 to revise paragraph (b) above the table to read as follows:

§ 229.403 (Item 403) Security ownership of certain beneficial owners and management.

(a) * * *

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(3) (§ 229.402(a)(3)), and directors and executive officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or

otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 240.13d-3(d)(1) of this chapter.

8. By amending § 229.601 to revise paragraph (b)(10)(iii)(A) to read as follows:

§ 229.601 (Item 601) Exhibits.

(b) *Description of exhibits.* * * *

(10) *Material contracts.* * * *

(iii)(A) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the named executive officers of the registrant, as defined by Item 402(a)(3) (§ 229.402(a)(3)), participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 240 continues to read as follows:

Authority: U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78j(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

10. By amending § 240.14a-101 by revising Items 8 and 10 of Schedule 14A to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

Item 8. Compensation of directors and executive officers. Furnish the information required by Item 402 (§ 229.402 of this chapter) of Regulation S-K if action is to be taken with regard to:

- (a) The election of directors;
- (b) Any bonus, profit sharing or other compensation plan, contract or arrangement in which any director, nominee for election as a director, or executive officer of the registrant will participate;
- (c) Any pension or retirement plan in which any such person will participate; or
- (d) The granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders as such, on a pro rata basis.

However, if the solicitation is made on behalf of persons other than the registrant, the information required need be furnished only as to nominees of the persons making the solicitation and associates of such nominees. In the case of investment companies registered under the Investment Company Act of 1940, furnish the information in Item 402(g) of Regulation S-K (§ 229.402(g) of this chapter) and the information concerning compensation of directors and officers that is required to be included in the company's registration statement form under the Investment Company Act in lieu of other compensation information required by Item 402.

Instruction.

If an otherwise reportable compensation plan became subject to such requirements because of an acquisition or merger and, within one year of the acquisition or merger, such plan was terminated for purposes of prospective eligibility, the registrant may furnish a description of its obligation to the designated individuals pursuant to the compensation plan. Such description may be furnished in lieu of a description of the compensation plan in the proxy statement.

Item 10. Compensation Plans. If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid or distributed, furnish the following information:

(a) *Plans subject to security holder action.* (1) Describe briefly the material features of the plan being acted upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class, and state the basis of such participation.

(2)(i) In the tabular format specified below, disclose the benefits or amounts that will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable:

NEW PLAN BENEFITS

Plan name		
Name and position	Dollar value (\$)	Number of units
CEO.....		
A.....		
B.....		
C.....		
D.....		
Executive Group.....		
Non-Executive Director Group.....		
Non-Executive Officer Employee Group.....		

(ii) The table required by paragraph (a)(2)(i) of this Item shall provide information as to the following persons:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S-K (§ 229.402(a)(3) of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

Instruction to New Plan Benefits Table

Additional columns should be added for each plan with respect to which security holder action is to be taken.

(iii) If the benefits or amounts specified in paragraph (a)(2)(i) of this item are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last completed fiscal year if the plan had been in effect, if such benefits or amounts may be determined, in the table specified in paragraph (a)(2)(i) of this item:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S-K (§ 229.402(a)(3) of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

(3) If the plan to be acted upon can be amended, otherwise than by a vote of security holders, to increase the cost thereof to the registrant or to alter the allocation of the benefits as between the persons and groups specified in paragraph (a)(2) of this item, state the nature of the amendments which can be so made.

(b)(1) *Additional information regarding specified plans subject to security holder action.* With respect to any pension or retirement plan submitted for security holder action, state:

(i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and

(ii) The estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this item may be furnished in the format specified by paragraph (f)(1) of Item 402 of Regulation S-K (§ 229.402(f)(1) of this chapter).

(2)(i) With respect to any specific grant of or any plan containing options, warrants or rights submitted for security holder action, state:

(A) The title and amount of securities underlying such options, warrants or rights;

(B) The prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised;

(C) The consideration received or to be received by the registrant or subsidiary for the granting or extension of the options, warrants or rights;

(D) The market value of the securities underlying the options, warrants, or rights as of the latest practicable date; and

(E) In the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and the registrant; and

(ii) State separately the amount of such options received or to be received by the following persons if such benefits or amounts are determinable:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S-K (§ 229.402(a)(3) of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group;

(D) Each nominee for election as a director;

(E) Each associate of any of such directors, executive officers or nominees;

(F) Each other person who received or is to receive 5 percent of such options, warrants or rights; and

(G) All employees, including all current officers who are not executive officers, as a group.

Instructions

1. The term "plan" as used in this item means any plan as defined in paragraph (a)(7)(ii) of Item 402 of Regulation S-K (§ 229.402(a)(7)(ii) of this chapter).

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Commission at the time copies of the proxy statement and form of proxy are filed pursuant to paragraph (c) of section 240.14a-6.

4. Paragraph (b)(2)(ii) does not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

5. The Commission shall be informed, as supplemental information, when the proxy statement is first filed, as to when the options, warrants or rights and the shares called for thereby will be registered under the Securities Act or, if such registration is not contemplated, the section of the Securities Act or rule of the Commission under which exemption from such registration is claimed and the facts relied upon to make the exemption available.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, et seq., unless otherwise noted.

Note:—These forms will not appear in the Code of Federal Regulations.

§ 249.310 [Amended]

12. By amending Form 10-K (§ 249.310) by removing the instruction to Item 11 of Form 10-K, and by revising Item 14(a)(3) of Form 10-K to read as follows:

Form 10-K Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Item 14. Exhibits, Financial Statement Schedules, and Reports on Form 8-K.

(a) List the following documents filed as a part of the report:

3. Those exhibits required by Item 601 of Regulation S-K (17 CFR 229.601 of this chapter) and by paragraph (c) below. Identify in the list each management contract or compensatory plan or arrangement required to be filed as an exhibit to this form pursuant to Item 14(c) of this report.

13. By amending Form 10-KSB (§ 249.310(b)) by revising Item 13 to read as follows:

Form 10-KSB Annual Report Pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934

Item 13. Exhibits, List and Reports on Form 8-K

(a) Furnish the exhibits required by Item 601 of Regulation S-B. Where any financial statement or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item. See Exchange Act Rule 12b-23 (§ 240.12b-23 of this chapter). Identify in the list each management contract or compensatory plan or arrangement required to be filed as an exhibit to this form.

By the Commission.

Dated: October 16, 1992.

Jonathan G. Katz,

Secretary.

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